

(16,387.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 237.

RAY W. JONES, APPELLANT,

vs.

PATRICK MEEHAN AND JAMES MEEHAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MINNESOTA.

INDEX.

	Original.	Print.
Amended bill of complaint.....	1	1
Exhibit A—Agreement between P. and J. Meehan and James C. O'Brien, November 1, 1894.....	9	9
Answer to amended bill of complaint.....	9	9
Exhibit A—Agreement between Moose Dung and Ray W. Jones, July 20, 1894, &c.....	17	17
Replication.....	19	19
Evidence for complainants.....	19	19
Testimony of Patrick Meehan.....	19	19
James Meehan.....	46	49
John George Morrison..	53	56
May-dwa-gun-on-ind.....	63	68
Leading Feather.....	65	70
Clement A. H. Beaulieu ..	70	71
Roderick McKenzie.....	71	76
Michael Burns.....	73	78
John Peterson.....	75	80
Wm. G. Porter.....	78	83

	Original.	Print.
Testimony of Thomas Willie.....	78	84
James Meehan, Jr.....	84	90
John Peterson (recalled).....	80	95
Albert Wickstrom.....	91	97
Robert Fairbanks.....	91	98
Paul H. Beaulieu.....	93	99
Joseph A. Wheelock.....	98	104
Alexander Ramsey.....	103	110
Orville Rhinehart.....	105	112
Patrick Meehan (recalled).....	108	115
James A. Kellogg (recalled).....	110	117
Exhibits A, B, and C—Lease from Moose Dung to Patrick and James Meehan, November 7, 1891.....	112	119
Exhibit D—Certified copy of letter from Orville Rhinehart to Commissioner of Indian Affairs, May 6, 1895....	113	121
E—Certified copy of extracts from report of Alex. Ram- sey to Commissioner of Indian Affairs, &c., dated October, 1863.....	114	122
F—Moose Dung's speech.....	117	125
G—Letter of United States Indian Agent Ruffe to Com- missioner Hayt, June 27, 1879.....	118	126
Letter of Commissioner Hayt to United States In- dian Agent Ruffe, July 25, 1879.....	118	126
Letter of United States Indian Agent Ruffe to Com- missioner Hayt, September 10, 1879.....	119	127
Letter of Commissioner Hayt to Secretary of In- terior, September 26, 1879.....	120	128
Letter of Secretary of Interior to Commissioner of General Land Office, September 30, 1879.	121	129
Evidence for defendant.....	121	129
Exhibits offered.....	122	130
Testimony of Ray W. Jones.....	123	132
James A. Kellogg.....	132	141
Robert M. Allen.....	144	153
Letter from Commissioner of Indian Affairs to Rob't M. Allen, May 4, 1895.....	146	155
Testimony of Paul H. Beaulieu.....	148	157
Charles J. Knox.....	151	160
Capt. John C. Lawler.....	159	169
Peter Graves.....	164	175
May-dwa gun-on-ind.....	169	180
Ne-gon-e-bin-ace.....	171	182
Nay-ay-tah-wub.....	172	183
Ay-sin-e-wub-eak.....	173	184
O-she-now-ah-sheak.....	174	186
Mah-gah-de-gwon-wed.....	176	187
Mrs. Julia R. Spears.....	177	189
Wm. R. Spears.....	184	196
Curtis B. Wells.....	194	207
James Powers.....	198	211
Hans Langseth.....	199	212
John M. Whitman.....	201	214
Carl Kurtzmer.....	204	217

	Original.	Print.
Testimony of Day F. Stacy.....	208	222
Chief Moose Dung.....	210	224
Bay-mway-way-bin-ace.....	215	230
Theophile La Bissoniere.....	216	230
Exhibits offered.....	219	233
Testimony of James A. Kellogg (recalled).....	219	233
Ray W. Jones (recalled).....	221	235
Defendant's Exhibit 1—Certified copy of letter from C. A. Ruffee to Commissioner Hayt, Sep- tember 10, 1879.....	221	236
2—Certified copy of letter of Secretary of Interior to Commissioner of General Land Office, September 30, 1879....	224	237
Letter of Commissioner of General Land Office to United States sur- veyor general at St. Paul, October 4, 1870.....	224	238
3—Certified extract from Crookston, Minn., tract book.....	225	238
4—Certified copy of description of tract. Agreement between Moose Dung and Jones, July 20, 1894.....	225	238
5—Joint resolution authorizing Secretary of Interior to approve lease, August 4, 1894.....	226	239
7—Letter of Secretary of Interior to chief of Indian division, Dec. 27, 1894...	228	242
9—Affidavit of W. L. Palmer.....	229	243
Articles of incorporation of The Max- well Jones Lumber Company.....	229	243
16—Letter of Commissioner Browning to Agent Allen, February 4, 1895.....	231	246
Letter of Agent Allen to Commis- sioner of Indian Affairs, March 30, 1895.....	233	248
Affidavits enclosed in foregoing letter.	234	249
Letter of Commissioner of Indian Af- fairs to Secretary of Interior, April 9, 1895.....	236	252
Letter of Secretary of Interior to Com- missioner of Indian Affairs, April 23, 1895.....	238	254
Letter of Commissioner of Indian Af- fairs to Agent Allen, May 4, 1895...	238	255
17—Agreement of heirs of Moose Dung with Jones, July 19, 1895.....	239	256
Exhibit A—Agreement between Moose Dung and Jones, July 20, 1894....	242	259
18—Bill of complaint in case of Moose Dung vs. Patrick and James Meehan	244	262
Exhibit A—Lease from Moose Dung to the Meehans, November 7, 1891..	248	267

	Original.	Print.
Defendant's Exhibit 6—Letter of Secretary of Interior to Commissioner of General Land Office, November 13, 1895.....	249	269
Testimony of James A. Kellogg (recalled).....	252	272
Order taking cause under advisement	254	273
Finding of facts	254	273
Conclusions of law.....	255	273
Decree	256	274
Assignment of errors	258	276
Notice of motion for leave to file supplemental answer.....	259	278
Motion for leave to file supplemental answer	259	279
Affidavit of Ray W. Jones	260	279
James A. Kellogg	261	280
Supplemental answer	262	282
Order denying motion for leave to file supplemental answer	264	284
Order for preliminary injunction	264	284
Petition for appeal.....	266	285
Allowance of appeal	267	286
Bond on appeal	268	286
Citation.....	271	287
Proof of service of citation.....	272	288
Clerk's certificate.....	273	288

1 In the United States Circuit Court, District of Minnesota,
Fourth Division.

PATRICK MEEHAN and JAMES MEEHAN, Complainants, }
vs. }
RAY W. JONES, Defendant.

Amended Bill of Complaint.

Patrick Meehan and James Meehan, both residents of the city of Milwaukee, in the State of Wisconsin, and both citizens of the said State of Wisconsin, bring this their amended bill against Ray W. Jones, a resident of the city of Minneapolis, in the State of Minnesota, and a citizen of the said State of Minnesota; and your orators aver that the matter in dispute in the cause exceeds, exclusive of interest and cost, the sum or value of two thousand dollars (\$2,000), and that the hereinafter-mentioned leasehold estate and privileges of your orators in the land hereinafter described, which are in controversy herein, are of the value of more than three thousand dollars (\$3,000).

And thereupon your orators complain and say that heretofore, to wit, on the 7th day of November, A. D. 1891, one Moose Dung, otherwise known as Mon-simoh, was the owner in fee-simple and in the actual, exclusive, and lawful possession of all the following-described land, situated in the county of Polk and the State of Minnesota, to wit, lots one (1), two (2), three (3), and four (4), in and of section twenty-seven (27), and lot one (1), in and of section thirty-four (34), all in township one hundred and fifty-four (154), range forty-three (43) west; that according to the United States Government maps, plats, and records of the Government survey of said township the said sections twenty-seven (27) and thirty-four (34) are and ever since the said survey have been fractional sections, and that the aforesaid lots in and of said sections numbered respectively as aforesaid are respectively small tracts of land, irregular in shape and area, and that all of said lots in said section twenty-seven (27) abut on the Thief river, on the westerly side thereof, the said river forming the eastern boundary line of said lots in said section twenty-seven (27), according to the aforesaid survey, and that the said lot one (1), in said section thirty-four (34), abuts on the Red Lake river, on the westerly side thereof, the said last-named river forming, according to the said Government survey, the southeasterly boundary line of the said last-mentioned lot.

2 That on the 7th day of November, A. D. 1891, while said Moose Dung was so lawfully and exclusively seized and possessed of said land as aforesaid, he, said Moose Dung, duly made and executed, in writing, under seal, and duly acknowledged and delivered to your orators, Patrick Meehan and James Meehan, a certain indenture of lease, wherein and whereby, for a valuable consideration therein expressed, he, the said Moose Dung, did demise, grant, bargain, and lease unto your orators, for the term or period of ten (10) years from said 7th day of November, 1891, all that por-

tion of the aforesaid land described as follows, to wit: A strip of land ten (10) feet in width along the entire boundary line of and upon said respective lots as such boundary line is formed by the aforesaid river, being a strip of land ten (10) feet in width along and upon the bank of Thief river and Red Lake river, along the water's edge of said rivers, and such strip of land commencing where the southwest corner of said lot one (1), in said section thirty-four (34), intersects said Red Lake river, and thence running north along the west shore of and up said Red Lake river to Thief river; thence along the westerly shore of and up said Thief river to a point where the north line of said section twenty-seven (27) intersects said Thief river.

That in and by the terms of said lease your orators covenanted and agreed to pay to said Moose Dung, as full compensation and consideration for said lease and for the rights and privileges assigned and transferred thereby unto your orators, the sum of twenty-five dollars (\$25) per annum as rental, payable on the 30th day of October in each year during the term of said lease, and your orators aver that they have fully paid to said Moose Dung, promptly and faithfully, at the respective times and in the manner specified in and by the terms of said lease, all sums of money which your orators agreed to pay to said Moose Dung for said lease, and your orators have fully performed in good faith, promptly, any and every thing agreed by them to be done or performed in and by the terms of said lease, and your orators have in all things fully performed their part of said contract or lease.

That the aforesaid lease, according to the express terms thereof, was made and delivered by said Moose Dung to your orators so that the land thereby leased unto your orators might be used by your orators, amongst other purposes, for the purpose of storing logs thereon for the erecting of piers, piling, and booms thereon and maintaining the same upon said lands to the design of your orators and for their uses and purposes in connection with their business of operating their hereinafter-mentioned saw-mill and manufacturing lumber, as hereinafter stated, and in and by the express terms of said indenture of lease said lessor, Moose Dung, conveyed unto your orators all the shore rights in and pertaining to said lands for and during the term of said lease for the purpose of conducting the business of lumbering, as hereinafter stated.

That the aforesaid lease was, on or about the 10th day of November, A. D. 1891, duly filed for record in the office of the register of deeds in and for the county of Polk and State of Minnesota, 3 and on said last-mentioned date was duly recorded in the records in said office in Book "E" of Miscellaneous Records, on page 69.

That upon the delivery of said lease unto your orators, as aforesaid, said Moose Dung surrendered unto your orators the possession of the land described in said lease, together with the rights, privileges, and easements therein and thereby conveyed and transferred; and thereupon your orators entered into possession of such lands and premises so leased unto your orators, and your orators have

ever since said date remained in the actual, continuous, uninterrupted, and exclusive possession, occupation, and use of said premises thereunder.

That your orators were induced and led into making the aforesaid contract of lease with said Moose Dung by statements and representations made to your orators by said Moose Dung prior to the making of said contract of lease to the effect that he, said Moose Dung, was the owner in fee-simple of said lands described in said lease, and that he had sole and exclusive right and authority to sell, convey, or lease said land; and your orators entered into said contract of lease in good faith, relying upon said statements and representations and in the full belief that the same were true, and upon the delivery of said lease to your orators as aforesaid your orators fully believed that said lease was valid in all respects, and that the same gave unto your orators the right and authority to enter upon said lands and to use and enjoy the same, as herein stated; and, relying upon such statements and representations and in good faith believing the same to be true, and without notice that any one claimed that said lease was not valid in all respects, and without notice that the Government of the United States claimed any interest in said lands adverse to the aforesaid leasehold estate of your orators under said lease, — entered upon said lands described in said lease and constructed and erected on the land described in said lease the improvements hereinafter described, and that said improvements were so made upon said land with the full knowledge and acquiescence of the Government of the United States and with the full knowledge and acquiescence of and without any interference from the United States Indian agent in charge of the Chippewa Indians in the State of Minnesota, and that ever since the making of said lease said lessor, Moose Dung, has lived upon land contiguous to the land described in said lease, and the improvements hereinafter described were made upon said land with the full knowledge and consent of said Moose Dung.

That your orators are and have been ever since about the date of said lease and for more than three (3) years last past engaged in the business of manufacturing lumber, lath, and shingles at the village of Thief River Falls, in the State of Minnesota, in and with the saw-mill hereinafter mentioned, and that for the purpose of conducting such business your orators, more than three (3) years ago and shortly after the execution of the aforesaid lease, as aforesaid, and in reliance thereon, erected, at great expense, on the east side of said Red Lake river, on land abutting on said Red Lake river (which land was then and is now owned in fee-simple by your orators), a

4 large and valuable saw-mill, of a permanent character, fully equipped and supplied with all machinery, shafting, fixtures, and furniture essential or necessary to the carrying on of the business of manufacturing saw-logs into lumber, lath, and shingles, and that the said saw-mill is and ever since its erection, as aforesaid, has been situated at a point on the said Red Lake river almost directly opposite to the said described lot one (1), in said section thirty-four (34), whereof ten (10) feet in width along the shore line

of said Red Lake river, with the shore rights aforesaid, was leased to your orators by said Moose Dung, as aforesaid, and that said saw-mill and a planing mill, which is being operated in conjunction therewith, cost your orators the sum of forty thousand dollars (\$40,000), and that said mills are now of the value of more than forty-five thousand dollars (\$45,000) and no less.

That the saw-logs with which your orators have been and are supplying their aforesaid saw-mill ever since its erection, as aforesaid, have been and are being brought to said saw-mill by means of placing such saw-logs in said Red Lake river at its source in Red lake, in the State of Minnesota, and by floating or driving said saw-logs in the waters of said river and causing said saw-logs to be carried by the current of said river to said saw-mill, and by holding and controlling said saw-logs in said river adjacent to said saw-mill by the piers, pilings, and booms hereinafter mentioned until used in said saw-mill.

That shortly after your orators went into possession of said land described in said lease and more than three (3) years ago, and at or about the time of the erection by your orators of the aforesaid saw-mill, as aforesaid, your orators constructed and erected in said Red Lake river, in the vicinity of said saw-mill and adjacent thereto and largely upon the land and premises so leased by your orators from said Moose Dung, as aforesaid, a large number of piers, pilings, and booms, wherewith to enable your orators to catch, hold, handle, and control in said river and upon the banks thereof at and about said saw-mill their said saw-logs so placed by your orators in said Red Lake river as aforesaid, and that your orators now are and ever since the construction and erection of said piers, pilings, and booms have been using the same for the purposes aforesaid, and that the maintenance of said piers, pilings, and booms in said river and largely upon said land so leased from said Moose Dung by your orators, as aforesaid, and the use of such land and premises so leased for the storing of logs and the maintaining of such piers, pilings, and booms in said river and upon said lands and premises in the course of holding, handling, and driving said saw-logs to your orators' saw-mill, as aforesaid, is essential and indispensable to the operating of said saw-mill, in this, that without such piers, pilings, and booms your orators could not catch, hold, or handle such saw-logs, so as to supply said saw-mill therewith; and your orators aver that the possession and use of said land, shore rights, and privileges so granted, transferred, and leased unto your orators by said Moose Dung, as aforesaid, are indispensable to the operating of said saw-mill and to the conducting of the aforesaid business of your orators

in this, that there is and can be no other possible way or
5 means of catching, holding, controlling, or handling such saw-logs in said river for the purposes aforesaid other than by means of said piers, pilings, and booms so erected in said river largely upon said land so leased unto your orators by said Moose Dung.

That your orators are the owners in fee-simple of many thousand acres of land in the State of Minnesota contiguous and tributary to

the head-waters of said Red Lake river, on which land there are standing and growing large quantities of pine timber, of the present value of more than fifty thousand dollars (\$50,000), said timber being suitable for saw-logs for use in said saw-mill, and having been purchased for such use by your orators, whereof to manufacture lumber, lath, and shingles in the operating of said saw mill, as aforesaid; and that your orators purchased said land and the said timber thereon for the purpose of supplying said saw-mill with saw-logs, as aforesaid; and that if said timber cannot be used by your orators for such purpose, the value of said timber to your orators will be greatly diminished; and that your orators intend to supply and are supplying said saw-mills with saw-logs cut from said timber on said lands, and brought to said mill, and handled and controlled in said river in the methods aforesaid and by the use of the piers, pilings, and booms above described.

That your orators have now in said Red Lake river, adjacent to said saw-mill, five hundred thousand (500,000) feet of saw-logs for use in said saw-mill, and that said saw-logs are being held in said river by means of the aforesaid piers, pilings, and booms so erected upon and attached to said land; and that if said piers, pilings, and booms were removed from said land, said saw-logs would be carried by the current of said river past and below said saw-mill; that on said river, below said saw-mill, there is a permanent dam in said river, known as Kretschmar's dam, and at said dam there is a fall in said river of more than twelve (12) feet; and that if said saw-logs were not held in said river adjacent to said saw-mill by means of said piers, pilings, and booms so attached to said land, said saw-logs would be carried by the current of said river over said dam, and that there is and will be no means whereby said saw-logs can be brought back to said saw-mill after they shall have passed over said dam.

That your orators have now, also in said Red Lake river and its tributaries, many miles above said saw-mill, twelve million (12,000,000) feet of saw-logs, which have been and are being cut by your orators during the present winter, for use in said saw-mill, during the spring and summer of the year 1895; and that said twelve million (12,000,000) feet of saw-logs will come down said Red Lake river in the coming spring and summer of the year 1895; and that your orators now have the aforesaid piers, pilings, and booms arranged in said river in such manner as to enable your orators to catch, hold, and handle said saw-logs when the same shall have arrived at said saw-mill in said river; and without said piers, pilings, and booms your orators would have no means whereby to catch, hold, or handle said saw-logs at said saw-mill; and if not so caught and held, said saw-logs will be carried by the current of said river over the aforesaid dam, and will thereby be lost to your orators; and your orators will thereupon have no saw-logs wherewith to supply and operate said saw-mill; that the value of said saw-logs so now held in said river at said saw-mill, as aforesaid, and which are to arrive at said saw-mill during the

coming spring and summer, as aforesaid, is the sum of eighty-five thousand dollars (\$85,000), and no less.

That your orators have actually paid out and invested in money in their aforesaid business, by way of purchasing said pine lands, and in the course of erecting and furnishing said saw-mill and planing mill, and in erecting the said piers, pilings, and booms in said river, and in purchasing lands under and adjacent to said saw-mill, and in purchasing machinery, tools, teams, and supplies, all of which are being used in the conducting of said business, and all of which are indispensable thereto, a sum of money exceeding in amount two hundred thousand dollars (\$200,000); and your orators aver that said sum of money so paid out and invested was expended by your orators after the taking of said lease from said Moose Dung by your orators as aforesaid, and in reliance thereon, and in the full belief on the part of your orators that the same was valid, and that thereunder your orators would have, during the full term of said lease, the right to use and enjoy said premises described in said lease, in accordance with the terms of said lease, and in the manner in which said premises described in said lease, have been used by your orators, as hereinbefore stated.

That heretofore, to wit, on the 1st day of November, A. D. 1894, your orators entered into a certain contract in writing (a true copy whereof is hereto attached and marked "Exhibit A"), wherein and whereby your orators agreed with one James C. O'Brien to furnish to him, said O'Brien, one million five hundred thousand (1,500,000) feet of lumber, to be hereafter sawed in said saw-mill, during the milling season of the year 1895, said lumber to be delivered on board railroad cars at Thief River Falls as fast as such lumber shall have been cut and prepared for shipment in said saw-mill; and your orators aver that any serious interference with the maintenance of said saw-mill or said piers, pilings, and booms, as aforesaid, will prevent your orators from fulfilling their obligations under said contract; whereby your orators will be liable in damages for a breach thereof.

That heretofore, to wit, on or about the 20th day of July, A. D. 1894, while your orators were in the actual possession of said lands so leased by your orators from said Moose Dung, as aforesaid, and while your orators were using the same for the purposes aforesaid, the defendant, Ray W. Jones, with full knowledge of the aforesaid rights and claims of your orators, procured or caused to be procured from said Moose Dung an alleged lease in favor of himself, said Ray W. Jones, as lessee, of the whole of said lot one (1) in said section thirty-four (34), and in terms including and embracing that part or portion of said lot one (1) in said section thirty-four (34) which had been previously leased unto your orators by said Moose Dung, and of which your orators were then in the actual use and occupation, as aforesaid; and by virtue of said alleged lease, so executed to said defendant by said Moose Dung, as aforesaid, said defendant now claims some estate or interest in or lien upon that portion of said lot so leased by said Moose Dung unto your orators and now possessed by your orators, as aforesaid; and

that said claims of said defendant are adverse to the estate of your orators in that portion of the aforesaid lot one (1), in said section thirty-four (34), so leased unto your orators by said Moose Dung, as aforesaid; and that said claims of said defendant thereto are wrongful and unlawful.

That said defendant, and, at his instance and behest, his agents, servants, and employes, in large numbers (the names of such agents, servants, and employes being at present unknown to your orators), are threatening to, and have attempted to, and intend to, and will, unless immediately restrained therefrom by the order of this court, forcibly, unlawfully, and with violence and by force of arms, enter upon that portion of the aforesaid lot one (1), in said section thirty-four (34), so leased to and now possessed by your orators, as aforesaid; and are threatening to, and have attempted to, and intend to, and will, unless so restrained, forcibly and unlawfully and with violence oust your orators, their servants and employes, from the possession thereof, now held by your orators, and thereby forcibly exclude and prevent your orators from using and enjoying said land and from using the aforesaid piers, pilings, and booms built upon and affixed to said land, which have been and are being used by your orators in connection with the operating of their aforesaid saw-mill, whereby your orators will be prevented from maintaining and operating their said saw-mill, and whereby the aforesaid business of your orators will be ruined, to the irreparable and immeasurable injury and damage of your orators, and to a degree and in an amount beyond the possibility of computation; in this, amongst other things, that the stoppage or material hindrance of the operating of the aforesaid saw-mill would prevent your orators from supplying their customers with lumber and would prevent your orators from fulfilling their obligations under said contract with said James C. O'Brien, whereby your orators will be liable in damages for a breach thereof; and that the aforesaid forcible entry, or attempted entry, so to be made upon said land by defendant will, unless prevented by the injunction of this court, result in great bodily harm to your orators, their servants and employes, and will result in a serious breach and disturbance of the public peace.

And your orators aver that said defendant, Ray W. Jones, has never at any time been in possession of any part of said land so leased and possessed by your orators, and that said defendant has never established any saw-mill or any other business whatever at said Thief River Falls or anywhere on said Red Lake river; that he has no saw-logs in said river at or in the vicinity of Thief River Falls; and that he does not reside in said village and has no office or place of business therein or anywhere on said Red Lake river; and that to the best of the knowledge, information, and belief of your orators said defendant owns no pine timber or other timber on or tributary to said Red Lake river, and owns no saw-logs anywhere in said river or its tributaries, and owns no property or estate
8 of any character in said village or anywhere on said Red Lake river or its tributaries.

Your orators further aver that heretofore, to wit, on the 13th day

of February, 1894, said defendant, Ray W. Jones, made a voluntary assignment, according to law, under the insolvent law of the State of Minnesota, for the benefit of his creditors, and that said defendant is now a bankrupt and financially irresponsible; and that if he be permitted to injure your orators or their business your orators will be without redress therefor in an action at law; for that no judgment in damages which may be recovered in any action against said defendant can be collected or enforced, there being no property or estate of said defendant out of which any judgment against him could be collected.

Your orators therefore pray for a decree herein quieting the title of your orators to the aforesaid portion of said lot one (1), in said section thirty-four (34), and to said shore rights and privileges appurtenant thereto, now so held and possessed by your orators under their aforesaid lease, as against any and all claims of said defendant thereto or therein; and for such other and further relief in the premises as may be agreeable to equity.

Your orators further pray that said defendant, his attorneys, counselors, agents, servants, and employés, and each and every one of them, may be restrained by a permanent injunction issued out of this court from entering or attempting to enter, or causing other persons to enter, upon said land so occupied and possessed by your orators; from in any manner interfering with the possession, or use, or enjoyment of said land, or any part thereof, by your orators, and from in any manner molesting, or attempting to molest, or causing or inciting other persons to molest or attempt to molest, your orators, their agents, servants, or employés, in the possession, use, and occupation of said premises.

Your orators further pray that pending the final determination of this suit a temporary injunction may be issued out of this court, or by a judge thereof, restraining and enjoining said defendant, Ray W. Jones, his agents, servants, and employés, and each of them, from doing or suffering to be done any of the acts hereinbefore enumerated and sought to be permanently enjoined herein until the further order of this court.

Therefore, will your honors grant unto your orators the writ of subpoena issuing out of and under the seal of this court, to be directed to said defendant, Ray W. Jones, commanding him, by a certain day and under a certain penalty, therein inserted, to appear before your honors, in the circuit court aforesaid, and then and there answer the premises and abide the order and decree of the court. An answer hereto under oath is hereby expressly waived.

Dated this 4th day of January, A. D. 1895.

JOHN C. JUDGE,

*Solicitor for Complainants, 617 Guaranty Loan Building,
Minneapolis, Minn.*

9 STATE OF MINNESOTA, } ss:
 County of Polk, }

Patrick Meehan and James Meehan, being first sworn and on oath, do severally depose and say that they are the complainants

in the above-entitled cause; that they and each of them have read the within and foregoing amended bill of complaint in said cause; and that the said amended bill of complaint and the statements and allegations therein contained are true.

Subscribed and sworn to before me this 5th day of January, 1895.

PATRICK MEEHAN.

JAMES MEEHAN.

ADAM ZEH,

Notary Public, County of Polk, Minnesota.

[NOTARIAL SEAL.]

EXHIBIT A.

Memorandum of agreement, made this first day of November, A. D. 1894, by and between P. & J. Meehan, parties of the first part, and James C. O'Brien, party of the second part, witnesseth, that the said parties of the first part, for and in consideration hereinafter mentioned, bargains and sells to James C. O'Brien, fifteen hundred thousand feet of mill-run lumber, culls out, to be cut during the sawing season of 1895, and to be loaded on the cars at Thief River Falls, for shipment to Argyle, Warren, and Hallock, Minnesota, as soon as said lumber can be sawed, during the early part of the summer of 1895, and prepared for shipment. Party of the second part agrees to pay the sum of (\$14.00) fourteen dollars per M for such lumber, as soon thereafter as lumber is disposed of.

In testimony whereof, the parties have hereunto set their hands and seals the day and year first above written.

P. & J. MEEHAN. [SEAL.]

JAMES C. O'BRIEN. [SEAL.]

(Title of Cause.)

Answer to Amended Complaint.

Ray W. Jones, the above-named defendant, for his answer unto the amended bill of complaint of the complainants, or unto so much thereof as he is advised is material and necessary for him to make answer unto, answering, says—

That he has not sufficient information regarding the complainants' place of residence and citizenship to form a belief, and therefore denies the same.

Denies that the matter in dispute in this cause exceeds, exclusive of interests and costs, the sum or value of two thousand dollars (\$2,000), and alleges that the same is of no greater value than the sum of five hundred dollars (\$500).

Denies that one Moose Dung, otherwise known as Mon-si-moh, was, on the 7th day of November, 1891, the owner in fee-simple and in the actual, exclusive, and lawful possession of the lands described and set forth in folio 2 of the complainants' bill of complaint, but admits that according to the United States Government maps, plats, and records of the Government survey of said township in said complaint mentioned, and that said sections twenty-seven (27) and thirty-four (34) are fractional, and are small

tracts of land irregular in shape and area and abut on Thief river on the westerly side thereof, and that said river forms the eastern boundary line of said lots in sections twenty-seven (27) and thirty-four (34), and the said lot one (1), in said section (34), abuts on the Red Lake river on the westerly side thereof, and that the said last-mentioned river forms, according to the said Government survey, the southeasterly boundary line of said last-mentioned lot, and alleges that said lot one (1), in said section thirty-four (34), was, prior to on or about the 13th day of December, 1894, vacant and unoccupied, and was prairie land and in the state of nature, except that, by permission of said Moose Dung, one James Powers erected and occupied thereon a building for an ice-house, and one Peter Eberhardt had built a small temporary structure which he occupied for a temporary carpenter shop, and that one Hans Langseth had built thereon a temporary structure to be occupied as a boat-house.

This defendant, further answering the complainants' bill of complaint, alleges that he has not sufficient information from which to form a belief as to whether on the 7th day of November, 1891, said Moose Dung made, executed, and delivered to the complainants a certain indenture of lease as in the bill of complaint stated, and therefore denies the same. And denies that said complainants have ever covenanted and agreed to pay said Moose Dung anything for the use and occupation and privileges claimed by them under their said lease as in the complaint stated or otherwise. Denies that the lease was made and delivered by said Moose Dung as in the complaint stated for the purposes therein stated, or for any other purpose, and alleges on information and belief that said so-called lease set up in said complainants' bill of complaint is a mere pretense and promulgated by said complainants for the purpose of preventing any other person or corporation from occupying said lot one (1), in section thirty-four (34); in this defendant's lease hereinafter mentioned and set forth, for the purpose of constructing and operating a saw-mill thereon and for no other purpose whatever.

Admits that the paper-writing was on or about the 10th day of November, 1891, recorded in the book and at the page of the records in the office of the register of deeds in and for Polk county as in the complaint stated.

Denies that Moose Dung at the time of the delivery of said pretended lease surrendered unto the complainants the land described in said lease, and denies that the complainants ever entered into the possession of said land or any of the privileges and easements therein claimed to have been conveyed at any time before on or about the 13th day of December, 1894, when said complainants pretended to take possession thereof.

Denies that said complainants were induced or led into making the aforesaid lease by any statement or representation of said Moose Dung prior to the making of said contract or at any time, and alleges and charges the fact to be that said complainants promulgated said pretended lease for the mere purpose of preventing any other person or corporation from erecting and operating a mill on said lot one (1) as hereinbefore stated, and for no other purpose whatever.

This defendant, further answering the complainants' bill of complaint, admits that the complainants have been ever since about the date of the pretended lease and for more than three years last past engaged in the business of manufacturing lumber, lath, and shingles at the place in the complaint stated, but denies that said complainants erected said mill in reliance on said pretended lease, and denies that they have ever erected anything of any cost or value whatever in reliance thereon, and alleges that the privileges and easements claimed by complainants under said pretended lease are of no value to them, and are wholly unnecessary to their carrying on successfully, economically, and advantageously their said business at Thief River Falls.

This defendant admits that the logs brought to the complainants' said saw-mills are brought to said mill by means of placing said saw-logs in said Red Lake river, and are floated and driven in the waters of said river to their said saw-mill, and alleges that said complainants can as readily and easily and without interruption get their said logs to their said mill without the use of the privileges and easements claimed under said pretended lease as with them, and that the occupancy of said lot one (1), in said section thirty-four (34), by any other saw-mill would in any manner whatever interfere with the operation of said complainants' said mill or getting of logs thereto.

This defendant, further answering the complaint of the complainants, denies that at any time said complainants ever erected in said river and upon the land and premises claimed in said pretended lease to the complainants any piers, piling, or booms or either of them, and alleges that there are no piers, piling, or booms on or nearer to said land than thirty (30) feet distant in the river, and the same are not used in any manner for handling, holding, or controlling their logs in said river or on the banks thereof, and alleges that said piling so driven in said river are at a distance of more than thirty (30) feet from the shore thereof and are at least thirty (30) feet apart, and if used for any purpose by the complainants are used for the purpose of keeping their said logs away from the bank and shore of lot one (1), in said section thirty-four (34), and the same are used for no other purpose; and that said piling or any piling, piers, or booms on or near said lot one (1) would be of no use or value whatever to the complainants in their said business.

This defendant, further answering the complaint of the complainants, alleges that he has not sufficient information from which to form a belief as to whether the complainants own any land or standing or growing timber thereon in the State of Minnesota as in the complaint alleged, and, therefore, leaves the complainants to prove the same, but alleges that the occupancy of said lot one (1) by another saw-mill would in no way injure the value of said land to said complainants or interfere with their use thereof to the purposes claimed in the complainants' bill of complaint.

This defendant, further answering the bill of complaint of the complainants, alleges that he has not sufficient information from which to form a belief as to the quantity of saw-logs said complainants have adjacent to their saw-mill for use in

said saw-mill or whether they have any logs there or not, but admits that there is a dam situated in said river as stated in said complainants' bill of complaint, but denies that said logs are held in position as stated in said complaint of complainants by means of anything attached to or on or near said lot one (1), and alleges that the use and occupation of any of the easements by said complainants claimed under their said pretended lease are wholly unnecessary for keeping and holding said logs in said river adjacent to complainants' said mill.

This defendant, further answering the complaint of the complainants, alleges that he has not sufficient information from which to form a belief as to the quantity of logs now owned by said complainants which are in said Red Lake river, and, therefore, leaves the complainants to prove the same. Nor has this defendant sufficient information from which to form a belief as to the amount complainants have paid out and expended in purchasing machinery, tools, teams, and supplies as in their said complaint alleged, and alleges that the matter in question in this suit does not affect or interfere with the expenditures alleged to have been so made by the complainants, and the same has nothing to do with this litigation whatever in any manner or form whatever, nor has this defendant sufficient information from which to form a belief as to the making of the contract, "Exhibit 'A,'" attached to the complainants' bill of complaint, and, therefore, leaves the complainants to prove the same, but alleges that the possession of the land and easements claimed by complainants under their said pretended lease of a portion of lot one (1) is wholly unnecessary for the purpose of enabling said complainants to carry out said contract, and this defendant alleges on information and belief that the said James O'Brien, with whom said pretended contract is made, is and has been for several years an employé of said complainants, and charges the fact to be that said contract is a mere pretense and is wholly without consideration and entered into by the complainants for the purpose of this litigation and for none other.

This defendant, further answering the complaint of the complainants, admits that on the 20th day of July, 1894, he procured from said Moose Dung a lease of lot one (1), in section thirty-four (34), a copy of which said lease is hereto attached and marked "Exhibit 'A,'" and made a part of this answer, but denies that he had any knowledge or information that said complainants had or claimed to have any right or interest in said lands, and denies that said complainants were in the use and occupation thereof in any manner or form whatever, and denies that they had ever been in the possession thereof in any manner or form whatever at any time before on or about the 5th day of December, 1894; on the contrary, alleges that this defendant was in the possession of said premises before said complainants ever took any possession whatever thereof.

This defendant, further answering the complaint of the complainants, denies that he has ever intended or now intends to take forcible and unlawful possession of said lot one (1), including the lands
13 claimed by the complainants under their said pretended lease,

or that any other person at his behest has ever threatened or intended to take forcible and unlawful possession of said premises.

This defendant, further answering the complaint of the complainants, admits that on or about the 13th day of February, 1894, he made a voluntary assignment according to law and under the insolvency laws of the State of Minnesota for the benefit of his creditors, but alleges that for the purpose of occupying the premises described in the lease by Mon-si-moh to this defendant, hereto attached and marked "Exhibit 'A,'" he has caused to be duly organized a corporation hereinafter set forth.

This defendant, further answering the complaint of the complainants, denies each and every allegation therein contained not hereinbefore specifically admitted, qualified, or explained.

This defendant, further answering the complaint of the complainant, alleges that said lot one (1), in section thirty-four (34), as described in defendant's lease, a copy of which is hereto attached and marked "Exhibit 'A,'" was, prior to the 2nd day of October, A. D. 1863, occupied by the Red Lake and Pembina bands of Chippewa Indians, and on said date said bands of Chippewa Indians did cede, sell, and convey to the United States all their right, title, and interest in and to all the lands then owned and claimed by them in the State of Minnesota and in the Territory of Dakota, within the following-described boundaries, to wit:

Beginning at the point where the international boundary line between the United States and the British possessions intersects the shore of the Lake of the Woods, thence in a direct line northwesterly to the head of Thief river; thence down the main channel of said Thief river to the mouth of Red Lake river; thence in a southwesterly direction in a direct line toward the head of Rice river to a point where such line would intersect the northwesterly boundary of the tracts ceded to the United States by a treaty concluded at the city of Washington on the 22nd day of November, in the year eighteen hundred and fifty-five, with the Mississippi, Rel-lager, and Lake Winnebigoishish bands of Chippewa Indians; thence along the said boundary line of said cession to the mouth of Wild Rice river; thence up the main channel of the Red river to the mouth of the Shayenne river; thence up the main channel of the Shayenne river to Poplar grove; thence in a direct line to the place of Stumps, otherwise called Lake Chicot; thence in a direct line to the head of the main branch of Salt river; thence in a direct line due north to a point where the direct line would intersect the international boundary aforesaid; thence easterly on said boundary to the place of beginning; and that all of lot one (1), in section thirty-four (34), herein described, was a part of said cession hereinbefore described, and that in a part, article IX, of said treaty it was provided and agreed that, upon the urgent request of the Indians, parties to this treaty, there shall be set apart from the tract hereby ceded a reservation of six hundred and forty (640) acres near the mouth of Thief river for the Chief Moose Dung, of which said reservation said lot one (1), in section thirty-four (34), is a part; and that afterwards said treaty was duly ratified, adopted, and promulgated by the Government of the United States,

and became and has ever since and still remains a treaty and an act of the United States Congress; and that afterwards the said Chief Moose Dung, as in article IX of said treaty mentioned, selected said reservation of six hundred and forty (640) acres, a part of which was lot one (1) of section thirty-four (34); and after the selection so made by Chief Moose Dung said Chief Moose Dung departed this life and left him surviving the Chief Moose Dung who made and executed this lease to the defendant hereinbefore mentioned as his oldest son, heir-at-law, and successor as chief of the Red Lake bands of Chippewa Indians, who has ever since and still remains a member of said band of Indians and their chief, and has ever since and still does live among the Indians of said tribe and maintains his tribal relations thereto.

That afterwards the Government of the United States, through its proper officers, set apart and designated said lot one (1), in section thirty-four (34), among other lands, as the reservation selected for said elder Chief Moose Dung in said treaty, and have ever since conceded, treated, and designated said selection as a reservation which said Moose Dung was entitled to possess and control, subject, however, to the control of the overseers and agents of the Government of the United States, and that while so in control of said section on the 20th day of July, A. D. 1894, the said Moose Dung made, executed, and delivered to this defendant the lease hereinbefore mentioned and hereto annexed and marked "Exhibit 'A';" and afterwards and on the 24th day of July, A. D. 1894, this defendant duly executed said lease, and on or about the 27th day of July, A. D. 1894, this defendant caused said lease to be filed in the office of the Commissioner of Indian Affairs of the Interior Department of the Government of the United States; and afterwards and on or about the 28th day of July, A. D. 1894, there was introduced into the Congress of the United States and duly and regularly passed thereby a resolution known and designated as "Private resolution No. 5," and after — passed by Congress was by the President of the United States duly approved; which is a joint resolution authorizing the Secretary of the Interior to approve a certain lease made in Polk county, Minnesota, and in the words and figures following:

"(Private Resolution No. 5.)

"Joint resolution authorizing the Secretary of the Interior to approve a certain lease made in Polk county, Minnesota.

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized to approve, if in his discretion he deems the same proper and advisable and upon such terms and limitations as he may impose, that certain lease made and executed by Mon-si-moh, commonly called Moose Dung, to Ray W. Jones of lot one (1), in section thirty-four (34), in township one hundred and fifty-four (154) north, of range forty-three (43) west, in the county of Polk and State of Minnesota, which said lease is now on file in the Office of Indian Affairs.

Approved August 4, 1894."

Which said resolution thereby then and there became a law of the United States of America and has ever since and still continues to be the law thereof; and subsequently and on the 13th day of November, A. D. 1894, said lease was duly approved by the Secretary of the Interior, by William H. Sims, first assistant and acting Secretary of the Interior; and afterwards and on the 27th day of December, A. D. 1894, after due consideration, the said action of the said acting Secretary of the Interior was duly confirmed and approved by the Hon. Hoke Smith, Secretary of the Interior, which said approval and confirmation thereof has ever since and still remains the final and binding act of said Interior Department.

This defendant, further answering the complaint of the complainants, alleges that subsequent to the execution and delivery of said lease and subsequent to the approval thereof by the Secretary of the Interior and the acceptance of the terms and conditions of such approval by this defendant, and on or about the 5th day of December, A. D. 1894, as hereinbefore mentioned and set forth, he went upon the land and premises, as in said lease mentioned and described, and took possession thereof and made measurements and laid out the location of a saw-mill, and drove stakes into the ground for the purpose of marking and indicating the location of such mill, and that at said date, when he so made said measurements and drove said stakes, there was upon said lot one (1), in section thirty-four (34), no piles, piers, or booms or any other structure of whatsoever name or nature, save and except the boat-house and ice-house hereinbefore mentioned, and a temporary structure occupied by one Peter Eberhardt as a carpenter shop in which to make repairs on his steamboat in the Red Lake river, nor *was* there any logs on said land or in the water in front thereof, nor any piles, piers, or booms nearer to said land than thirty (30) feet from the shore thereof in the Red Lake river.

This defendant, further answering the complaint of the complainants, alleges and shows that he sought and procured the lease from Moose Dung to himself and the approval thereof, as hereinbefore set forth, for the construction and operating upon the land therein described a saw-mill for the manufacture of lumber, lath, and shingles, and the appurtenances thereunto necessary, and for the purpose and expectation of bringing the logs to said mill along the Red Lake river and conducting said logs from said river into said mill by the usual methods of a chute and an endless chain; that said complainants have been fully notified and informed of said purpose on the part of this defendant from the time he first entered into negotiations for said lease, and have constantly and continually endeavored to prevent and fought this defendant in his purpose and undertaking; that this defendant has procured to be duly incorporated under the laws of the State of Minnesota a company known and designated as the Maxwell-Jones Lumber Company, with a capital stock of one hundred thousand dollars (\$100,000), which

16 said capital stock has been by responsible persons fully subscribed, and the said subscribers are ready and willing to pay the amount of their subscription at any time when called upon

and became and has ever since and still remains a treaty and an act of the United States Congress; and that afterwards the said Chief Moose Dung, as in article IX of said treaty mentioned, selected said reservation of six hundred and forty (640) acres, a part of which was lot one (1) of section thirty-four (34); and after the selection so made by Chief Moose Dung said Chief Moose Dung departed this life and left him surviving the Chief Moose Dung who made and executed this lease to the defendant hereinbefore mentioned as his oldest son, heir-at-law, and successor as chief of the Red Lake bands of Chippewa Indians, who has ever since and still remains a member of said band of Indians and their chief, and has ever since and still does live among the Indians of said tribe and maintains his tribal relations thereto.

That afterwards the Government of the United States, through its proper officers, set apart and designated said lot one (1), in section thirty-four (34), among other lands, as the reservation selected for said elder Chief Moose Dung in said treaty, and have ever since conceded, treated, and designated said selection as a reservation which said Moose Dung was entitled to possess and control, subject, however, to the control of the overseers and agents of the Government of the United States, and that while so in control of said section on the 20th day of July, A. D. 1894, the said Moose Dung made, executed, and delivered to this defendant the lease hereinbefore mentioned and hereto annexed and marked "Exhibit 'A;'" and afterwards and on the 24th day of July, A. D. 1894, this defendant duly executed said lease, and on or about the 27th day of July, A. D. 1894, this defendant caused said lease to be filed in the office of the Commissioner of Indian Affairs of the Interior Department of the Government of the United States; and afterwards and on or about the 28th day of July, A. D. 1894, there was introduced into the Congress of the United States and duly and regularly passed thereby a resolution known and designated as "Private resolution No. 5," and after — passed by Congress was by the President of the United States duly approved; which is a joint resolution authorizing the Secretary of the Interior to approve a certain lease made in Polk county, Minnesota, and in the words and figures following:

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 15 (43) west, in the county of Polk and State of Minnesota, which said lease is now on file in the Office of Indian Affairs.
 Approved August 4, 1894."

Which said resolution thereby then and there became a law of the United States of America and has ever since and still continues to be the law thereof; and subsequently and on the 13th day of November, A. D. 1894, said lease was duly approved by the Secretary of the Interior, by William H. Sims, first assistant and acting Secretary of the Interior; and afterwards and on the 27th day of December, A. D. 1894, after due consideration, the said action of the said acting Secretary of the Interior was duly confirmed and approved by the Hon. Hoke Smith, Secretary of the Interior, which said approval and confirmation thereof has ever since and still remains the final and binding act of said Interior Department.

This defendant, further answering the complaint of the complainants, alleges that subsequent to the execution and delivery of said lease and subsequent to the approval thereof by the Secretary of the Interior and the acceptance of the terms and conditions of such approval by this defendant, and on or about the 5th day of December, A. D. 1894, as hereinbefore mentioned and set forth, he went upon the land and premises, as in said lease mentioned and described, and took possession thereof and made measurements and laid out the location of a saw-mill, and drove stakes into the ground for the purpose of marking and indicating the location of such mill, and that at said date, when he so made said measurements and drove said stakes, there was upon said lot one (1), in section thirty-four (34), no piles, piers, or booms or any other structure of whatsoever name or nature, save and except the boat-house and ice-house hereinbefore mentioned, and a temporary structure occupied by one Peter Eberhardt as a carpenter shop in which to make repairs on his steamboat in the Red Lake river, nor *was* there any logs on said land or in the water in front thereof, nor any piles, piers, or booms nearer to said land than thirty (30) feet from the shore thereof in the Red Lake river.

This defendant, further answering the complaint of the complainants, alleges and shows that he sought and procured the lease from Moose Dung to himself and the approval thereof, *fas* hereinbefore set forth, for the construction and operating upon the land therein described a saw-mill for the manufacture of lumber, lath, and shingles, and the appurtenances thereunto necessary, and for the purpose and expectation of bringing the logs to said mill along the Red Lake river and conducting said logs from said river into said mill by the usual methods of a chute and an endless chain; that said complainants have been fully notified and informed of said purpose on the part of this defendant from the time he first entered into negotiations for said lease, and have constantly and continually endeavored to prevent and fought this defendant in his purpose and undertaking; that this defendant has procured to be duly incorporated under the laws of the State of Minnesota a company known and designated as the Maxwell-Jones Lumber Company, with a capital stock of one hundred thousand dollars (\$100,000), which
16 said capital stock has been by responsible persons fully subscribed, and the said subscribers are ready and willing to pay the amount of their subscription at any time when called upon

therefor, and that said corporation is now anxious, ready, and willing to take possession of said lands and construct said mill and have the same ready for operation at the opening of the next sawing season, and are ready, anxious, and willing to make contracts for the purchase of timber and logs to be used in the manufacture of lumber in said mill, but that by reason of the unlawful, wrongful conspiracy and acts of the complainants, are deterred therefrom, and this defendant is greatly injured, damaged, and delayed.

This defendant, further answering the complainants' bill of complaint, alleges and charges the fact to be that the said complainants' said pretended lease is false, fraudulent, insufficient, invalid, and void, and gives the said complainants no right or title in and to the land claimed or the easements and appurtenances thereunto connected, and that said lease is without authority of law and contrary to the statutes, laws, rules, and regulations of the Government of the United States, and that this defendant, by reason of his said lease and the approval thereof, as hereinbefore stated and set forth, is entitled to the possession of said land in his said lease described.

And this defendant alleges that said bill of complaint of complainants is false and untrue in each and every particular, save and except as hereinbefore admitted or explained, and that the same is wholly without equity. Wherefore defendant prays the same relief as though he had demurred thereto.

Wherefore defendant prays that the prayer of the bill of complaint of complainants be by this honorable court denied, and that this defendant be decreed to have a good and valid lease, and that complainants' lease be declared void and invalid, and that defendant have such other and further relief, the premises being considered, as to this honorable court shall seem meet and proper, and that this defendant recover of the complainants his costs and charges in this behalf expended.

RAY W. JONES.

STATE OF MINNESOTA, }
County of Hennepin, } ss:

Ray W. Jones came personally before me, and, being first duly sworn, deposes and says that he has read the foregoing answer by him subscribed and knows the contents thereof, and that the same is true of his own knowledge, except as to the facts therein stated on information and belief, and as to those facts he believes it to be true.

RAY W. JONES.

Subscribed and sworn to before me this 15th day of January, A. D. 1895.

ROBERT D. RUSSELL,
Judge District Court, Fourth Judicial
District, State of Minnesota.
JAMES A. KELLOGG,
Solicitor for Defendant.

EXHIBIT "A."

This contract and agreement made this 20th day of July, A. D. 1894, by and between Mon-I-Moh (commonly called Moose Dung), son, heir, and successor of Mons-O-Moh (also commonly called Moose Dung), party of the first part, and Ray W. Jones, party of the second part.

Witnesseth that said party of the first part, in consideration of the agreements and covenants hereinafter mentioned, does hereby lease and let unto the party of the second part, his heirs and assigns, all that piece or parcel of land known and described as follows:

Lot one (1) in section thirty-four (34), town one hundred and fifty-four (154), range forty-three (43), county of Polk and State of Minnesota, and more particularly described as follows:

Commencing at the northeast corner of the plat of Thief River Falls, thence east to the middle of the Red Lake river, thence down the thread of the stream of said river to the plat of said Thief River Falls, thence north to the place of beginning, together with all appurtenances and riparian rights thereunto belonging, for the period of twenty years from this date, at and for the yearly rental of two hundred dollars per year, payable quarterly, in advance.

And the said second party, for and in consideration of the foregoing, does hereby covenant and agree to and with the party of the first part that he will well and truly pay to the party of the second part the rent hereinbefore specified, and in addition thereto will procure from the Government of the United States of America and its proper officers written evidence of title to the tract of land given to Mons-I-Moh by treaty made at Old Crossing of Red Lake river in the State of Minnesota, the second day of October, A. D. 1863, or a patent of such title.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

MON-SI-MOH. ^{his} x [SEAL.]
mark.
RAY W. JONES. [SEAL.]

In presence of—

W. R. SPEARS.

C. J. KNOX.

W. B. McNEILL.

JAMES A. KELLOGG,

EDSON J. KELLOGG,

To Ray W. Jones.

STATE OF MINNESOTA, }
County of Beltrami, } ss:

I hereby certify that on this 20th day of July, A. D. 1894, personally appeared before me Mon-Si-Moh, commonly called Moose Dung, to me personally known to be the person described in the foregoing instrument, and to whom I fully explained and made known the

nature thereof in his own language, and after such explanation he subscribed the same and acknowledged the same to be his free act and deed, and for the purposes therein set forth.

W. R. SPEARS, [SEAL.]
Notary Public, Beltrami Co., Minn.

18 STATE OF MINNESOTA, }
County of Hennepin, } ss.:

On this 24th day of July, A. D. 1894, before me, a notary public within and for said county, personally appeared Ray W. Jones, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed and for the purposes therein stated.

JAMES A. KELLOGG, [SEAL.]
Notary Public, Hennepin County, Minn.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY, November 13, 1894.

The within lease from Mon-Si-Moh, or Moose Dung, to Ray W. Jones, dated July 20, 1894, is hereby approved upon the following conditions:

The rent shall be \$400 per annum, payable quarterly in advance, and shall be paid to the agent in charge of the Chippewa Indians in Minnesota, and by him paid to the parties found to be entitled thereto by this department.

Within six months next preceding the expiration of each period of five years from the date thereof, the rental value shall be ascertained and the rent readjusted to that value. If the parties are unable to agree on the amount to be paid for the ensuing five years, which shall also meet the approval of the Secretary of the Interior, then the lessor, his heirs or assigns, may appoint an appraiser, to be approved by the Secretary of the Interior, and the lessee, his heirs — assigns, may also select an appraiser, and said two appraisers may select a third, or in case of their failure to agree in such selection, then upon application of either party to said lease, ten days' notice thereof being given to the other party, to the judge of probate for the county in which said land is situated, said judge may appoint a third appraiser, and the three appraisers so appointed, or a majority of them, shall fix and determine the amount of rent to be paid for the five years next ensuing.

The said premises, nor any part thereof, shall not be sublet without the written consent of the lessor, his heirs or assigns, and the approval of the Secretary of the Interior.

This approval shall not become operative until the terms and conditions herein recited shall have been accepted in writing by the lessee.

WM. H. SIMS,
Acting Secretary.

I hereby accept and agree to the terms and conditions of the above approval of lease.

Dated Nov. 16th, 1894.

RAY W. JONES.

For a valuable consideration I agree to the terms of the above approval and accept the same.

Dated Dec. 5th, 1894.

MON-SI-MOH. ^{his}
x
mark.

19 Witnesses to Mon-Si-Moh's mark:

W. R. SPEARS.

LEWIS P. JOHNSON.

F. H. KRATKA.

E. G. MAXWELL.

Title of Cause.

Replication.

Replication of complainants in the above-entitled cause to the answer of Ray W. Jones, defendant.

These repliants, saving and reserving all advantages of exception to the manifold insufficiencies of said answer, for replication thereunto say that they will aver and prove their said bill to be true and sufficient, and that the said answer is untrue and insufficient Wherefore they pray relief as in said bill set forth.

JOHN C. JUDGE,
Solicitor for Complainants.

Title of Cause.

Deposition of Patrick Meehan, taken on behalf of the complainants, at the office of the clerk of said court, at the city of Minneapolis, on Saturday, the 27th day of April, 1895, before Richard A. Mabey, special examiner in this cause, pursuant to a stipulation and order of court on file herein.

Present on behalf of the complainants, J. C. Judge, Esq.; on behalf of the respondent, James A. Kellogg, Esq.

Thereupon the following proceedings were had, to wit:

PATRICK MEEHAN, a witness produced on behalf of the complainants, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Judge:

Q. 1. State your age.

A. I am 56 years of age.

Q. 2. Where do you reside?

A. I reside in Wisconsin.

Q. 3. Of what State are you a resident?

A. State of Wisconsin.

Q. 4. You are one of the complainants in this suit?

A. Yes, sir.

Q. 5. You know James Meehan, the other complainant?

A. Yes, sir.

Q. 6. Where does he reside?

A. He resides also in Wisconsin, Milwaukee.

Q. 7. Is he a resident of Wisconsin also?

A. Yes, sir.

Q. 8. You and the other complainant, James Meehan, have business interests in this State, have you not?

A. Yes, sir; at Thief River Falls.

Q. 9. Have you a firm name?

A. Yes; the firm goes under the name of P. & J. Meehan.

Q. 10. How long has your firm been in business in this State?

A. I think about five years.

20 Q. 11. At and in the vicinity of Thief River Falls?

A. Thief River Falls and Red Lake Falls; Red Lake Falls first.

Q. 12. What is the character of your business at that place?

A. Manufacturing and wholesaling and retailing pine lumber.

Q. 13. You are familiar with the land described in the bill of complaint which is involved in this suit?

A. Yes, sir.

Q. 14. What is the value of the leasehold estate claimed by you in this suit to your land?

Mr. KELLOGG: I object to that as immaterial, and the witness does not show himself qualified to testify on that point.

A. I consider it worth six or seven thousand dollars.

Q. 15. That is the value of the leasehold interest in the ten-foot strip of land described in the bill of complaint?

A. Yes, sir.

Mr. KELLOGG: To that I object as leading, and move to strike out the previous answer as incompetent and irrelevant.

A. Yes, sir; I consider it worth that much.

Q. 16. Was that leasehold interest of that value at the time of the commencement of this suit?

A. No, sir; I don't think it was.

Q. 17. At the time of the commencement of this suit?

A. Oh, excuse me; I thought you meant at the time of leasing. Yes, sir.

Mr. KELLOGG: The same objection and motion to strike out as incompetent, and that he has not shown himself competent to testify on that subject.

Q. 18. What knowledge have you, Mr. Meehan, as to the value of land and leasehold estates in the county of Polk in this State?

A. Well, I have bought some considerable land around there in Polk county, and dealt in it.

Q. 19. You have been dealing in land from time to time?

A. Yes, sir; ever since I came here. I have bought a great deal of land in Beltrami county and some in Polk.

Q. 20. And in your opinion the leasehold interest claimed by you and set up in the bill of complaint in this suit is of the value of between six and seven thousand dollars.

A. Yes, sir.

Mr. KELLOGG: I make that same objection.

Q. 21. And was of such value at the time of the commencement of the suit?

A. Yes, sir.

Mr. KELLOGG: Objected to as leading, and the same as to the last question and answer he hasn't shown himself competent to testify with regard to this. The same objection to both those questions.

Q. 22. I hand you a paper-writing, Mr. Meehan. Please state whether or not that paper-writing is a true and correct copy of the lease from that Indian, Moose Dung, or Mon-si-moh, mentioned in the bill of complaint and under which you are in possession?

A. Yes, sir.

21 Q. 23. The property involved in this proceeding?

A. Yes, sir; this is a copy of the lease.

Mr. KELLOGG: Objected to as incompetent, irrelevant, and leading.

Mr. JUDGE: I offer that instrument in evidence.

Marked Complainants' Ex. A.

Mr. KELLOGG: To this I object as incompetent, irrelevant, and immaterial, not properly identified and not sufficiently proven.

Mr. JUDGE: I offer in addition to the lease and in conjunction therewith the certificate of the register of deeds of Polk county, Minnesota, that such instrument is a true and correct copy of the original lease remaining on file in his office.

Mr. KELLOGG: I will make the same objection to this offer.

Q. 24. You may state, Mr. Meehan, the circumstances attending the procuring or execution of the lease mentioned in the complaint under which you claim to be and are in possession of the property in question.

Mr. KELLOGG: To that I object as incompetent, irrelevant, and immaterial; not a proper question.

A. Well, when we first started to build a mill at Thief River Falls I went to the Indian, Moose Dung, and asked him if he wanted to lease me that piece of property, and he said he did, and so we agreed on a lease of this piece of property for ten years. I asked him if he was the owner of the property, and he stated that he was, and we went to Red Lake Falls and there drew up the lease, and had it signed and acknowledged and afterwards put on record. I then went on and built the saw-mill, and the following year I went on and commenced driving piling in the river and making necessary improvements to catch and sort our logs there.

Q. 25. At the time of the making of this lease was there any person in possession of the property described in it?

A. Moose Dung was then living on it; he lived in his house at that time on the section.

Q. 26. On the section of which this was a part?

A. Yes, sir.

Mr. KELLOGG: That last question is objected to as leading.

Q. 27. After the execution of this lease what occurred?

A. Well, not anything, only we went on and improved the property, and drove piling and formed our boom.

Q. 28. Improved the property described in the lease?

A. Yes, sir. I drove piling there three different winters on this same land; the same property described.

Q. 29. Was this Mon-si-moh or Moose Dung present at any time while you was making improvements upon the land?

A. Yes, sir; he was there nearly all the time. He worked at our mills quite a while. I think about three months at different times; worked for us as a mill hand.

Q. 30. What was his attitude toward you after the making of this lease with respect to your possession of the land described in the lease?

Objected to as incompetent, irrelevant, and immaterial and improper.

A. Always friendly.

22 Q. 31. Did he ever in any way object to your occupying and using the land?

The same objection.

A. Never, sir; never from the day I leased it up to the present day.

Q. 32. He was there in that vicinity and in a position to know what you were doing with reference to this land during the term of the lease?

Objected to as leading.

A. Yes, sir; all the time nearly.

Q. 33. Who carried on the negotiations with the Indians with reference to procuring you this lease?

Objected to by respondent as immaterial.

A. I did, sir.

Q. 34. You acted for the firm of P. & J. Meehan in procuring the lease?

Objected to by respondent as leading and the same objection as before.

A. Yes, sir.

Q. 35. For what purpose did you lease this strip of land?

Objected to by respondent as incompetent, irrelevant, and immaterial.

A. For the purpose of putting down this piling and storing logs there and dividing them, and letting other logs go down the river, if any should be driven below us, so we could take our own in; for the purpose of putting in booms and piers and for a shore to drive piling to fasten, if we needed it.

Q. 36. You had a mill adjacent to this land?

A. We had after we leased it. We built the mill directly after we leased the land, during the same month.

Q. 37. Did the procuring of this lease have anything to do with your building the mill?

Objected to by respondent as incompetent, irrelevant, and immaterial, and asking for a conclusion.

A. Yes, sir.

Q. 38. In what way?

A. Well, I don't think I would have built the mill for any permanent business there without I could have leased the land; or, at least, I might go on and state further, I would not have started in with a permanent business there without I had a lease of that land; if I knew there was somebody else coming in to get in on that small strip I wouldn't undertake to do my business there. I would have gone some other where.

The respondent moves to strike that answer out as irresponsible and immaterial and the conclusion of the witness.

Q. 39. What relation does this strip of land bear to your mill and other property which you are pursuing there in your milling business?

A. The amount of shore rights between our mill and the reservation is less than half a mile and there is only room for about four million of logs in that piece of river, and after we strike the reservation we have no rights to drive piling or piers and booms on the reservation without an order from the Government, and even with that, as soon as those lands are allotted the river frontage will become the property of any Indian that takes the allotment; there will be no place to hold logs, any amount of logs, over four million there, to manufacture.

Q. 40. What I want to know was what connection this strip described in this lease has to your milling business there?

A. For the forming of storage to hold logs. We can't put any booms in without we hold the shore on each side to make the storage and fasten to them. We have no right to put piling in the river in front of any person's land or along the shore, only where we have either the lease or the ownership.

The respondent moves to strike out the answer as argumentative and immaterial.

Q. 41. Couldn't you have and can you not operate your saw-mill without the use of this strip of land involved in this lease?

Objected to by respondent as immaterial and calling for the opinion of the witness.

A. Not without a great deal of cost and trouble—extra expenses and trouble and handling of the logs and being confined to a smaller space.

The respondent moves to strike out the answer as the opinion of the witness and immaterial.

Q. 42. Now, at the time of the negotiation with this Indian, Moose Dung, which led up to the making of this lease by him to your firm, what representations, if any, did he make with reference to his right to make a lease of the property or with reference to his ownership of it?

Objected to by respondent as incompetent, irrelevant, and immaterial, and any representations would not be binding upon the respondent in this case and could in no way affect the respondent in this case.

A. I understood by everybody that he was—

Mr. KELLOGG: Hold on; just answer the question direct.

A. He told me he owned it; that he was the owner of it.

Q. 43. He told you he was the owner of the property?

A. Yes, sir.

Q. 44. Did you believe that to be true?

Objected to by respondent as immaterial and cannot in any way affect the defendant in this case.

A. I did, sir.

Q. 45. What knowledge, if any, had you to the contrary?

The same objection made by the respondent.

A. None at all. I heard everybody say that he owned it.

Q. 46. You entered into this contract of lease in reliance upon those representations, did you?

Objected to by respondent as immaterial.

A. Yes, sir.

Q. 47. And when did any doubt arise in your mind as to the validity of the lease which you obtained from the Indian and which is set up in the complaint here?

Objected to by respondent as incompetent, irrelevant, and immaterial, and an improper question.

A. I understood in the winter of 1894, along, I think, in February or about that time during the winter, that a Mr. Griffith, 24 from this city—from Minneapolis—and another party which I can't relate the name of went to Red Lake and made—

Mr. KELLOGG: Leighton, wasn't it?

A. I think so, sir. I wouldn't be sure, but I know one was Griffith—and made a lease with Moose Dung for some of his land and sent it to Washington, and I was informed along in the spring—

this was unknown to me that they had been making such—but through some means I found out they had been getting a lease and was taking it to the department at Washington, and the Indian Commissioner disapproved of it because it was for a limit of twenty years.

The respondent moves to strike out the answer as incompetent, irrelevant, and immaterial, and hearsay.

Q. 48. That led you to think that possibly it might be necessary to have any lease made by an Indian approved by the Government in order to make it valid?

The same objection by respondent.

A. Yes, sir.

Q. 49. You entered into possession of this land under the lease shortly after the making of it, did you not?

Objected to by respondent as leading.

A. Yes, sir; we occupied it by placing timber on it. We have been in possession of it all the time.

Q. 50. Continuously?

A. Yes, sir. We always occupied it by drawing logs out onto the shore. We hauled our boom timber on it; we hauled our boom timber out and placed it on the shore and some of it has never been taken off and it is still there—been there for three years.

Q. 51. Are you or James Meehan named in the lease, or have you ever been in any way in default in the performance of any of the conditions or provisions of the lease?

Objected to by respondent as immaterial.

A. No, sir. May I state anything further in relation to that?

Q. 52. Yes.

A. We have paid him for as much as four years ahead—advanced him on it.

Q. 53. You have paid the rent promptly?

A. Yes, sir.

Objected to by respondent as leading, and he moves to strike out the previous answer as immaterial and not proper testimony.

Q. 54. Your firm has invested a large amount of money in your business at Thief River Falls, have you not?

Objected to by respondent as leading and immaterial.

A. Yes, sir.

Q. 55. About what amount has been invested by you and your firm in your business there?

Objected to by respondent as immaterial.

A. Over \$200,000; that is, in our business.

Q. 56. When were these investments made?

Objected to by respondent as immaterial.

25 A. During the last four years all the time. We have been increasing our purchases of land and increasing our logging business and increasing our general business every year.

Q. 57. Were they made after or before you procured this lease from Moose Dung?

Objected to by respondent as immaterial.

A. Nearly all afterwards.

Q. 58. If you were to be deprived of the use of this ten-foot strip of land involved in this suit, how would it affect the operation of your mill?

Objected to by respondent as incompetent, as irrelevant and immaterial, and not admissible under the pleadings in this case.

A. It would very seriously damage our business.

The respondent moves to strike out the answer as the opinion of the witness.

Q. 59. Did you ever have any knowledge, notice, or intimation at any time since this lease was procured that the Government of the United States claimed any right or interest in or any control over this land?

Objected to by respondent as incompetent, irrelevant, and immaterial.

A. Not until the time of the controversy in Washington, when those people took their lease before the department.

Q. 60. When was that?

A. That was some time last July; 1894.

Q. 61. At any time since the making of this lease did any officer or representative of the Government of the United States or of any of the departments of the Government of the United States ever in any way exercise any control over this land or ever in any way interfere with your right of occupancy under your lease?

Objected to by respondent as incompetent, irrelevant, and immaterial.

A. No, sir; not in any way.

Q. 62. At any time since the making of this lease has any representative of the Government or of any department of the Government ever been there at Thief River Falls or within view of this land?

Objected to by respondent as incompetent, irrelevant, and immaterial.

A. Yes, sir; special agents were there and passed there several times.

Q. 63. Did they see the condition of the land at that time?

Objected to by respondent as leading and immaterial.

A. They could if they had looked that way.

Q. 64. Has the Indian agent in charge of the Chippewa Indians in Minnesota ever been at Thief River Falls since you were there?

Objected to by respondent as leading and immaterial.

A. No; I think not.

Q. 65. Did you ever have any conversation with the Indian agent in charge of the Chippewa Indians and residing at White Earth with reference to your occupancy of this land during the time that the lease has been running?

A. I couldn't say whether I had or not, but I am satisfied that they knew I had a lease of it and was occupying it, as everybody knows.

26 The respondent moves to strike out the answer as incompetent, irrelevant and immaterial, and merely the opinion of the witness.

Q. 66. At the time that this lease was procured by you what was the value per year of the land described in the lease and of the privileges granted by the lease?

Objected to by respondent as incompetent, irrelevant and immaterial, and calling for the opinion of the witness, and he is not shown to be competent to testify on that question.

A. There was no value, I don't think, to the shore right at the time. The section wasn't leased for anything; it couldn't be leased at the time; there wasn't any people living there; nothing to make it of any value, so he didn't lease it at all until after we had built our mill and people commenced moving in there; then he leased it for a cattle pasture. Up to that time there was no value to the land for either grazing or cultivation, and for the shore rights there wasn't anybody looking for it or wanting it to occupy it.

Respondent moves to strike out the answer as immaterial and not responsive to the question—not within the issues of this case.

Q. 67. What was the condition of the country there at the mouth of Thief river and vicinity at that time—very populous?

A. There wasn't any people there, sir. There was a few Indians on the point and a few white people occupying the place called Thief River, what is the village now.

Q. 68. About what was the population of what is now the village of Thief River Falls?

Objected to by respondent as incompetent, irrelevant, and immaterial.

A. I should think between 40 and 50 people.

Q. 69. Any railroad there?

A. No, sir; not within seven or eight miles is the nearest.

Q. 70. When did the railroad come in there?

A. The railroad was brought in there in September, I think, 1893.

Q. 71. What were the circumstances of its coming there?

Objected to by respondent as incompetent, irrelevant, and immaterial.

A. I came to St. Paul and saw Mr. Hill and arranged with them to build a railroad in there the following year on conditions that I would build the mill in that year. That was in 1891, and the agreement was made between me and him if I built the mill in 1891 he would build the railroad in 1892. The railroad came in there in 1892, in the fall of the year after I built, the following year. I made that arrangement with Mr. Hill in the presence of P. Cavanaugh, of St. Paul, in the Ryan hotel.

The respondent moves to strike out the answer as incompetent, irrelevant, and immaterial, not responsive to the question, and not within the issues of the case.

Q. 72. That was Mr. Hill, of the Great Northern railroad?

A. That was Mr. Hill, of the Great Northern railroad.

Q. 73. And after the mill was built and the railroad extended to it did any change occur in the condition of things about the village?

Respondent objects the same as before.

A. They commenced moving in there before the mill was completed and the following year after it was completed. It was
27 built in the fall and finished its completion in the spring and started to run, and there was hundreds of people came in the following summer and built houses there after the mill was completed and in running order and had been manufacturing.

Q. 74. Well, what effect, if any, did the building of the mill and the extension of the railroad to the village have on property values?

Objected to by respondent as incompetent, irrelevant and immaterial, and assuming a fact not proven.

A. It increased the value of lots in the village that I could have bought for \$25 up to \$300. I was offered lots when I went there first from \$10—

Q. 75. Well, that don't matter.

A. Yes, sir.

Q. 76. Did the building of the mill and the extension of the railroad have any effect upon the value of the land described in this lease of yours?

The same objection made by respondent.

A. Yes, sir; I think it did have a great effect on it.

Q. 77. In what way?

A. Because it made it valuable for grazing purposes. The people coming there put their stock out to graze, and he leased it for \$75 to \$100 a year and \$125. This year it is leased for \$175 for grazing purposes.

Q. 78. I mean the land described in your lease.

Objected to by respondent as incompetent, irrelevant and immaterial, and calling for the opinion of the witness.

Q. 79. Whether the building of the mill there made that strip of land any more valuable than it was before the mill was built.

A. Well, I think it did, because nobody wanted it before then. It appeared to be of more value afterwards.

Q. 80. Has the Indian, Moose Dung, at any time claimed the right to possession of this land described in the lease since the time he made the lease to you?

Objected to by respondent as incompetent, irrelevant, and immaterial.

A. No, sir.

Q. 81. He has at all times acquiesced in your possession, has he?

The same objection by respondent.

A. Yes, sir.

Q. 82. The lease of which you have been testifying is the same one which is set up and described in the bill of complaint in this suit?

Objected to by respondent as calling for the opinion of the witness; the record will show for itself.

A. Yes, sir.

Q. 83. You have been in the exclusive possession of the land ever since the making of the lease, have you not?

Objected to by respondent as calling for the conclusion of the witness.

A. Yes, sir.

Q. 84. That is, yourself and your coplaintiff?

28 The same objection made by respondent.

A. Yes, sir; my partner.

Q. 85. These sums of money which you have paid as rental to this Indian for this land during the time that the lease has been running were all paid from time to time without any knowledge or notice on your part that *by* or anybody else claimed any right or interest in the land or right to the possession of the land as against you during the term of the lease?

Objected to by respondent as incompetent, irrelevant and immaterial, and assuming a fact not proven.

A. Yes, sir.

Q. 86. For what purpose did you use the piles which you say you placed upon this land in the river opposite to the land?

A. For dividing our logs; separating them.

Q. 87. For holding the logs in the river?

A. For holding the logs in the river, holding them from going down the river, or if we need to separate any or any came from above with the log-drifts going to Crookston that we could divide

them and turn their logs through one part and hold our own in the other.

Q. 88. What would be the effect of removing those piles?

A. Well, if they were removed and taken out of there altogether we could neither hold any logs; neither could we divide any logs coming down the river going below.

Q. 89. What effect would that have upon the operation of your mill?

A. It would have the effect to let our logs go down the river and we wouldn't have none to saw. That is a certain effect.

Q. 90. About how many piles have you upon this land described in this lease?

A. I think probably 100 or 125. I never counted them, but somewhere about 100 to 125 pilings.

Q. 91. What was the cost of putting those pilings in?

A. I should think the value of the pile and the driving of them is worth from four to five dollars.

Q. 92. Each?

A. Yes; the cost of the piling. The piling cost us from two to three dollars apiece without driving them, and driving and all would be, I should judge, about \$5 apiece.

Q. 93. Have you any saw-logs in the river now?

Objected to by respondent as immaterial.

A. Yes, sir.

Q. 94. Above the mill?

Objected to by respondent as immaterial and leading.

A. Yes, sir.

Q. 95. How far?

A. Well, there is logs from the mill we are sawing, and we drove down about 700,000 that laid on the raft just a little above the boom, scattered along the river. We let them down day after day what we want to saw.

Q. 96. None of those logs have come down yet?

29 Objected to by respondent as leading and immaterial.

A. The winter logs? Just ask that again.

Q. 97. None of those logs have come down yet?

A. Yes; they have been coming down all the time.

Q. 98. To the mill?

A. Yes, sir.

Q. 99. How many million feet of these logs are there in the river that are coming down?

Objected to by respondent as incompetent, irrelevant, and immaterial.

A. We have in Red lake and east of the lake about ten millions that is to come down the river during the season.

Q. 100. During the coming summer?

A. Yes, sir; if there is water to drive them; and we had about 700,000 in the mill pond all winter, laying there.

Q. 101. Those logs will come to your mill?

A. Yes, sir; all of them.

Q. 102. Well, when they arrive at the mill, how will they be held or controlled so as to be prevented from going further down the stream?

A. By these pilings and booms stretched along to keep them from going by. We have those pilings drove and the booms strung along to them attached to the shore at the upper end.

Q. 103. Are any of those booms and piles on this land involved in this case?

A. Yes, sir; I should think there was 100 of these pilings that is on this land in the river, in the bed of the river, belonging to this land, which is holding our boom, and some of them on the shore. I wouldn't state positively how many pilings there is, but there is a large amount of them, because I never counted them.

Cross-examination.

By Mr. KELLOGG:

X Q. 1. You say there was some of these piles on the land. Do you mean that they are on the shore above the water?

A. No; not above the water, but they are on the shore, though.

X Q. 2. They are in the water, are they?

A. They are in the water, but on the shore.

X Q. 3. How far from the usual water line there where the water usually extends?

A. It would depend on the stage of water altogether.

X Q. 4. I say the usual water; that dam holds the water at about a usual height, doesn't it?

A. No, sir; it don't; it varies very much.

X Q. 5. Well, how far from the bank of the river are they?

A. Some of them is driven right on the bank.

X Q. 6. Where the dam holds the water?

A. Where the dam backs the water.

X Q. 7. Right on the dry land, are they?

A. They are not on dry land now, but where it was once dry land before the dam flowed. She raised on us.

X Q. 8. Before the dam raised the water?

30 A. Yes, sir.

X Q. 9. How far out in the water are they?

A. I couldn't really tell you; I never measured.

X Q. 10. Well, are they 100 feet out?

A. No, no; not half of that distance.

X Q. 11. Well, are they 30 feet out?

A. Well, they might be between 20 and 30.

X Q. 12. Are *there* any nearer to the shore than that?

A. I think when the water is down in the pond they are a good deal nearer than that.

X Q. 13. I am talking now about where the dam usually holds the water.

A. Well, as I told you before, it varies considerable. Sometimes they raise a big head of water on there and let it right off again, and there is no certain head of water kept on that mill pond. They keep letting it off and raising and lowering it to suit their own convenience, or some purpose that I don't know.

X Q. 14. Are they not all driven in a row up and down the stream?

A. If you will explain to me what a row is, I will tell you.

X Q. 15. Well, in the same general line up and down the river?

A. No; not in a line they are not.

X Q. 16. How much out of line are they?

A. Oh, they are drove very crookedly at places; they sweep around like that in places, and some places they are out in the river far, and some other places they are close to the shore.

X Q. 17. Will you say that there is a pile in that river nearer than 30 feet to the bank of the river? Opposite to this land, I mean.

A. Yes; there is piling driven right on the shore when the water is let down, but when the water is raised up then they are flooded by the water.

X Q. 18. They are 30 feet away from the shore line?

A. I don't know that they are thirty.

X Q. 19. From twenty to thirty?

A. Yes; something like that when the water is up.

X Q. 20. And none nearer than that?

A. That I couldn't say; I don't know. Yes; I think there is some nearer than that, but not in the land that is in controversy; there isn't any nearer than that probably.

X Q. 21. That is all the piling there is on this land put there by you?

A. All the piling that is on this land is put there by me, I think.

X Q. 22. I say this is all there is there that was put there by you?

A. Yes, sir; nobody else has ever drove any that I know of.

X Q. 23. You attempted last August, did you not, to get a lease from Moose Dung of land including this land?

Objected to by complainants as incompetent, irrelevant, and immaterial, and not proper cross-examination.

Mr. KELLOGG: I will state that it is cross-examination upon the question that complainants' counsel asked that he had relied on the sufficiency of his lease.

31 A. I believe I did; yes, sir.

X Q. 24. And you sought to have it approved by the Interior Department of the United States?

A. It was sent to the Indian Commissioner.

X Q. 25. Yes; and asked for his approval?

A. Yes, of the Indian Commissioner.

X Q. 26. You procured that lease yourself, did you?

A. Yes, sir.

X Q. 27. You knew at that time that I was at Thief River in July last negotiating with Moose Dung for the Jones lease?

Objected to by complainants as incompetent, irrelevant, and immaterial.

A. I knew you was there. At least I saw a man that looked like you there. I didn't know you then; didn't know who you were.

X Q. 28. And you knew I was negotiating with Moose Dung for the Jones lease?

A. Not the first time you were there. I didn't know what your business was.

X Q. 29. Do you know or did you know in his lifetime one James Dean?

A. Yes; I knew James Dean.

Complainants' counsel objects to each and every question as incompetent, irrelevant, and immaterial, and respondent's counsel consents that such objection may be noted without repeating it after each question.

X Q. 30. He was related to you, was he?

A. No, sir; no relation of mine.

X Q. 31. Didn't you send him to Red Lake agency with a communication to your brother, James Meehan, the co-complainant, notifying your brother that I was at Red Lake negotiating a lease with Moose Dung?

A. Yes; I sent him up there.

X Q. 32. With a letter to your brother?

A. Yes; but not stating that you were negotiating with Moose Dung.

X Q. 33. You in that letter requested that your brother come down to the agency?

A. No, sir.

X Q. 34. Your brother was then above the agency there?

A. I don't know where he was, sir.

X Q. 35. What is it?

A. I don't know where he was, sir. He was up at the agency, but I don't know where.

X Q. 36. You know that your brother did come down to the agency or was at the agency at the time I was there, do you not?

A. I don't know, sir.

X Q. 37. Didn't your brother ever tell you he was there?

A. I don't recollect what he said to me in relation to it.

X Q. 38. Do you recollect of seeing me at Thief River when I returned from the agency after I had procured the Jones lease?

32 A. I don't recollect; no, sir.

X Q. 39. Do you know one C. J. Knox, of Thief River?

A. Yes, sir; I know him.

X Q. 40. Do you recollect of meeting him there and inquiring of him on Monday, the 23rd day of July last, if we had procured a lease from Moose Dung?

A. I don't think I ever asked Mr. Knox any such thing. I have had very few conversations with Mr. Knox in the last twelve months.

X Q. 41. Let me refresh your recollection. He was getting a statement signed by the business men there with regard to the rental of this 31 acres, the land in question. Did you not meet him and ask him if he desired you to sign it, and you then asked him if we got a lease, and Mr. Knox said that we did.

A. I don't recollect what the conversation was. I met him at Roebeck, and he had a petition circulating and I asked him to show me the petition and he showed me the petition. I asked him if he wanted me to sign it. He said he would just as soon I would sign it as not, and I told him I guessed I wouldn't do it; but I don't think it referred in any way to any lease of land or anything about you.

X Q. 42. You saw me there on that day, did you not?

A. I could not tell you that, sir. I haven't any recollection what day that was nor even the month of the year. I can't tell you what day or month it was.

X Q. 43. You didn't tell Mr. Knox nor did you tell me at that time, did you—

A. No; I don't think I had any conversation with you at all.

X Q. 44. Wait till I get the question. Nor Mr. Jones at any time that you had this lease in question in this case that you now claim under?

A. I don't think I had any conversation with you nor Mr. Jones at all until about the time of the investigation.

X Q. 45. Well, you didn't tell us that.

A. Mr. Knox was well aware of my lease all the time. He didn't need for me to tell him.

X Q. 46. The lease that you are relying on here?

A. Yes, sir; he is well aware of it. Everybody knew it.

X Q. 47. You don't mean that I knew it or Mr. Jones knew it?

A. I think you did, in my opinion.

X Q. 48. That I knew it?

A. Yes, sir.

X Q. 49. You never told me so, did you?

A. No; but you have means of knowing lots of things that I don't tell you.

X Q. 50. I am just inquiring about your telling me.

A. You are getting me in one straight.

X Q. 51. And you didn't say anything to Mr. Knox at that time about it?

A. I think I told Mr. Knox that I had a lease. He knew I had a lease.

X Q. 52. At the time we were speaking of when he had the petition?

33 A. I don't know whether I did directly that day or not, but my impression is that I probably did, because I read his petition. I don't recollect what was in the petition, but it wasn't anything to my interest very much.

X Q. 53. You have said, Mr. Meehan, that you were in possession

of this property. Do you mean that you were any more in possession than you had driven those piles in the river?

A. Well, we occupied the shore by hauling timber onto it and using it.

X Q. 54. Well, you occupied any shore you happened to want to use for that purpose?

A. No; we don't draw timber onto other people's land and leave it there year after year.

X Q. 55. Now, give the time and the nature of the timber that you ever had on this land the last five years that you have been up there?

A. I think about the fall of 1892, summer and fall of 1892, I drew a lot of boom timber on there, and part of it remains there still on this land.

X Q. 56. Is that all?

A. Well, I occupied it for the driving of these piles and tying our lines on the shore there to the posts and stumps where there was a tree. We didn't need to put anything else. I tied our lines to the trees, and we occupied it for all the use that we had for it and for the use that we rented it for.

X Q. 57. Tell us how many stakes and where they are driven around this line above the water line.

A. There is stakes drove all along there; I couldn't tell you where they are; you would have to go and look at them.

X Q. 58. This is all the occupancy you ever made of it?

A. I don't understand you.

X Q. 59. Well, you understand what I have said with regard to piles and stakes?

A. We have occupied it for using it for boom purposes and for driving the piles along the shore, and occupied it for holding logs and dividing them, the purpose that we rented it for.

X Q. 60. That is the water you have used?

A. The water and the land.

X Q. 61. Did you divide any of the logs on the land?

A. No; but we had to go to the shore to tie our lines, and occupied the shore in that way, which we would have no right to without we had a lease of it.

X Q. 62. Were you there during the summer of 1894, at Thief River?

A. I was a good deal of the time, I think; 1894 is a year ago; that was last summer. Yes; the last summer past I was there a good deal of the time. A. Yes, sir.

X Q. 63. Do you know the steamer "Viking"?

A. Yes, sir.

34 X Q. 64. Do you know that that was plying on the river between Thief River Falls and Red Lake agency?

A. Yes, sir.

X Q. 65. Do you know that it passed up the river between your piling and the shore line?

A. No, sir; I don't know of its doing that.

X Q. 66. Do you say that it did not?

A. Yes, sir; I say it did not. It used to come ashore between my piling and the shore line, but backed out and went out in the river and went up through the river.

X Q. 67. Do you know that it never went up between the bank of the river, the dry land, and your piling?

A. I don't think it ever did, sir.

X Q. 68. I say do you know that it did not?

A. No; I don't know. They might have run some times when I wasn't there, but I was on it very frequently and I never saw it going there.

X Q. 69. What do you say as to whether it could get up through there or not?

A. Oh, yes; it could get up probably at some times, if the water was high enough in the pond. It would depend on the water.

X Q. 70. In your direct examination you said the mill was adjacent to this land. Have you any other mill there?

A. I don't think I said any such thing. The stenographer will see that.

X Q. 71. Well, you mean to say now it is not adjacent to this land, do you?

A. No; I don't mean to say that, but I mean to tell you that you are asking me if I did not say so.

X Q. 72. Is it adjacent to that land?

A. It isn't very far off from it.

X Q. 73. How far off?

A. Oh, I should think about one-eighth of a mile.

X Q. 74. It is on the opposite bank, is it not?

A. Yes; on the other side of the river.

X Q. 75. This land is on the west side of Red Lake river?

A. Yes, sir.

X Q. 76. And your mill is on the east side of the river?

A. Yes, sir.

X Q. 77. And you think an eighth of a mile below?

A. I should judge so. I wouldn't be certain about that, but I think about that, an eighth of a mile—no, it isn't quite an eighth.

X Q. 78. Put it in rods so we will know what you mean by one-eighth of a mile.

A. You know how many rods a mile is, I suppose.

X Q. 79. How many rods is it from this land?

A. I couldn't tell you how many rods it is. It is somewhere between eight and ten hundred feet below. I would have to get a pencil to calculate the feet into rods.

35 X Q. 80. Well, will you say it is not 110 rods below?

A. No; I don't think it is, sir.

X Q. 81. Will you say it is not 100 rods below?

A. Well, Mr. Kellogg, I have never measured the ground, and I couldn't tell you what the distance is. I give you my opinion it was eight or ten hundred feet. That is as near as I can come to it.

X Q. 82. You wouldn't call it adjacent to this land, would you?

A. Yes; I call it pretty close to it. That ain't very far off.

X Q. 83. You have some piers there in the river, have you not?

A. Yes, sir.

X Q. 84. How far are they from this land?

A. They are between the mill and the land.

X Q. 85. What are they built of?

A. They are built out of timber and stone; some of them piling.

X Q. 86. They are a sort of crib, are they not?

A. Yes, sir; they are what we call a pier.

X Q. 87. You haven't any piers opposite this land in the river, have you?

A. No; but we have piling.

X Q. 88. I am asking you about piers now. How far from the point at which they are nearest to this land are they distant from the land?

A. I couldn't answer that question.

X Q. 89. Why?

A. Because I don't understand it, in the first place.

X Q. 90. I will make it plainer, then. How far are they from the nearest point of this land to them?

A. To these piers or pilings?

X Q. 91. To the piers.

A. Five or six hundred feet, I guess.

X Q. 92. And there are no piers on this land?

A. No; there is no piers on the land, but there is some piling drove right close to the land on the bank.

Redirect examination.

By Mr. JUDGE:

Q. 104. At the time of the commencement of this suit, Mr. Meehan, what was the character of the possession held by you at that time?

Objected to by respondent as not rebuttal and having been gone into on the examination-in-chief.

A. We had peaceable possession of the property and no interference from anybody.

Respondent moves to strike out the answer as incompetent, irrelevant and immaterial, not responsive to the question, and the opinion of the witness only.

Q. 105. Were there at that time no other improvements upon this land or any possession other than these piles and logs of which you have testified upon your cross-examination?

Objected to by respondent as not rebuttal, having been gone into on the examination-in-chief.

A. Yes; we had a house built on it before the suit was commenced.

36 Q. 106. You testified upon your direct examination that at the time of the commencement of this suit the complainants here were in the actual possession of this land.

Objected to by respondent as leading and prompting the witness.

Q. 107. What did you mean by that?

Objected to as argumentative and asking the witness to explain his answer, and incompetent, irrelevant, and immaterial.

A. We had driven piles and built a house on it.

Q. 108. On the ten feet?

A. Yes, sir; and also built a fence on it; fenced the strip the whole length of the fraction; drove cedar posts down and put a wire fence on it.

Q. 109. On the ten feet described in the lease?

Objected to as leading and not rebuttal, having been gone into on the examination-in-chief.

A. Yes, sir.

Q. 110. What is the present condition of the property with reference to the character of your possession?

Objected to as incompetent, irrelevant, and immaterial.

A. Well, we are occupying the house; it is built there, and the fence is still on the land, and it is in our possession; we are using it—using it now for our booming purposes.

Q. 111. Where does the fence run?

A. The fence runs along the bank of the river, about ten feet back from the river, the whole length of the fraction.

Q. 112. Is the house outside or inside the fence towards the river?

A. It is toward the river, on the river side of the fence; it is on the ten-foot strip.

Q. 113. Was that the condition of things at the time of the commencement of this suit?

A. Yes, sir.

Q. 114. Now, on your cross examination, in answer to a question, you stated that in August, 1894, you attempted to procure the approval of another lease from this Indian, Moose Dung?

A. Yes, sir.

Q. 115. I will ask you whether or not that lease embraced the same land only as involved in this proceeding.

A. No, sir; it embraced more land and for a longer period. It embraced more land, and it was made for ten years—no; it was made for five years, with the privilege of ten.

Q. 116. What other land did it embrace?

A. It embraced this fraction that is in controversy, and also two other fractions north of it, making about 140 acres.

The respondent moves to have the answer stricken out, as the lease would be the better evidence.

Q. 117. In addition to this ten-foot strip involved in this suit, what other land was embraced in this lease to which reference was made on cross-examination as having been obtained by you in August, 1894?

Objected to as incompetent, irrelevant and immaterial, and the lease would be the better evidence.

37 A. There was this fraction that is in controversy and two other fractions north of it, running along the Red Lake and Thief rivers.

Q. 118. What do you mean by a fraction?

A. There is fractions laid east of what is along the line east of the three quarter sections; it is the fractional, and I was leasing three of these fractions, making about 140 acres, and did lease them from him.

Q. 119. Your lease of August, 1894, then covered 140 acres of land?

A. Yes, sir.

Objected to as leading, and the lease would be the better evidence.

A. That is my impression just now.

Q. 120. That lease, then, only embraced this ten feet incidentally?

Objected to as leading and calling for the conclusion of the witness.

A. Yes, sir; I am not certain as to how much land that embraced, but that is my impression. I want to be fairly understood.

Mr. KELLOGG: You are entirely mistaken about the quantity, Mr. Meehan, in this last lease. It embraced about an acre beyond this land.

A. I don't know but you are right, Mr. Kellogg. I think that is right now. I believe that is right. When I come to make the lease with him he only leased me the fraction and about an acre above it. I want to correct that.

Q. 121. When you speak of the fraction, what do you mean?

A. There is about 32 or 33 acres, I think, in it.

Q. 122. You mean, do you not, lot one, in section 34, containing 31 acres?

A. Yes, sir.

Q. 123. Well, now, involved in this suit, as the records show, there is only a strip of land, ten feet in width, along the boundary line as formed by the river of this lot one?

A. Yes, sir.

Q. 124. Well, this lease of August, 1894, you say embraced how much land?

A. That embraced the whole of lot one, the entire fraction, and about an acre above in the next fraction.

Q. 125. Now, during the time you had been in possession of this strip of land and the shore rights and privileges thereunder has such possession not been marked by any other evidence than those piles in the river?

Objected to as leading and assuming a fact that he had been in possession of the land.

A. Yes.

Q. 126. Was there no other evidence of your possession than these piles along the bank and in the river?

A. Yes; we built this house on there and fenced it.

Q. 127. Yes; but prior to that time.

A. Well, we used to haul timber out on the shore and kept it for hauling timber out there and storing it and keeping it out of water in the winter.

38 Q. 128. Timber was allowed to lay on this ten feet during the entire winter?

A. Yes, sir.

Q. 129. And in the summer time, when the water was low in the river, how about that?

A. Well, we had a right——

Q. 130. With respect to having logs there?

A. Well, they could lay on the shore.

Q. 131. Well, did they?

A. Yes, sir; at times. We had quite a lot of oak logs laid there pretty near twelve months on the shore, and hauled them off again and took them down and sawed them up.

Q. 132. Do you know the defendant in this case, Ray W. Jones?

A. I have seen him several times.

Q. 133. What improvements, if any, has he put in the river at Thief River Falls?

Objected to as incompetent, irrelevant, and immaterial.

A. Not any that I know of.

Q. 134. Has he a mill there?

Objected to as incompetent, irrelevant, and immaterial.

A. No, sir.

Mr. KELLOGG: He wants to put one there awful bad.

A. No, sir; he has got no mill that is visible.

Q. 135. Has he any logs in the river?

Objected to as incompetent, irrelevant, and immaterial.

A. No, sir; I know he has no logs in the river, because I know all the logs that is in the river and lake in that country.

Q. 136. Has he any office there?

Objected to as incompetent, irrelevant, and immaterial.

A. No, sir.

Q. 137. Has he any residence?

Objected to as incompetent, irrelevant, and immaterial.

A. No, sir.

Q. 138. Anywhere in the vicinity of Thief River Falls?

A. Not that I know of, or I guess anybody else knows of.

Q. 139. Has he, to your knowledge, any property interests in Thief River Falls or in that vicinity or anywhere on the Red Lake river?

Objected to as incompetent, irrelevant, and immaterial.

A. I never heard of his having anything. I never heard anybody say he had.

Q. 140. Since the time that you procured this lease from Moose Dung has Ray W. Jones, the defendant here, ever been in possession of that land described in that lease or any portion of it?

Objected to as incompetent, irrelevant and immaterial, and an improper question, leading and not rebuttal, and calling for the opinion of the witness.

A. No, sir; never has.

Recross-examination.

By Mr. KELLOGG :

39 X Q. 93. When did you build this house and fence there, Mr. Meehan?

A. I couldn't give you the exact date; some time last fall.

X Q. 94. Was it not last December?

A. I couldn't tell you; it was some time last fall.

X Q. 95. Was it not in December last?

A. I couldn't say just what month it was.

X Q. 96. You don't remember what month?

A. I don't exactly remember.

X Q. 97. Will you say it was not in December last?

A. I could not say; wouldn't answer that question, because I couldn't tell you now just what month it was.

X Q. 98. There were no improvements on this land whatever, were there?

A. Oh, yes; there was some improvements.

X Q. 99. What?

A. This piling.

X Q. 100. I mean outside of the piling and matters you have spoken of. The land had never been plowed?

A. No, sir.

X Q. 101. It laid there in a perfect state of nature?

A. Yes; I couldn't plow then feet of the shore very well.

X Q. 102. I mean this Moose Dung reservation.

A. Yes; there had been some land cultivated up by his house.

X Q. 103. Up on the hill where that old shanty used to be?

A. Yes, sir.

X Q. 104. Do you say there had been something cultivated there?

A. Oh, yes; they raised corn there several times, and planted potatoes. He made his crop there until his wife died.

X Q. 105. That wasn't on this lot?

A. Oh, no, sir.

X Q. 106. It was back from the river on the hill?

A. Back a little ways from the river; I should judge about 15 or 20 rods back from the river.

X Q. 107. Aside from that there had never been anything done with this reservation of Moose Dung's?

A. Well, they have been using it for grazing ground when he lived there.

X Q. 108. There was no fences?

A. No; not made by him.

X Q. 109. Any buildings?

A. No buildings, except his house, till we put up this building.

X Q. 110. That was an Indian hut?

A. Oh, it was a log house.

— Q. 111. What is called an Indian hut, was it not?

A. Well, I don't know what you term an Indian hut; it was a log house, probably 14 x 16.

X Q. 112. One story?

A. One story; that is right.

X Q. 113. Just big enough for a man to stay in?

40 A. Oh, no.

X Q. 114. I mean the height.

A. High enough for a man to go in, and a dozen people used to live in it at the time.

X Q. 115. Prior to the lease that you have spoken of for this lot one and an acre beyond you talked about another lease with Moose Dung, did you?

A. We had the lease that is in question here now. We had that, I think, nearly three years prior to the one I was making in August, 1894.

X Q. 116. Well, that was till a third lease, not the one in question in this case and not the one you sought the approval of. There was still another lease, was there not?

A. No; I hadn't made any other lease with him.

X Q. 117. Didn't you ever make a lease with Moose Dung after you made this ten-foot lease until you made the one that you filed and asked the department to approve?

A. No, sir; never made no leases.

X Q. 118. Didn't you procure a lease from Moose Dung and leave it with Major Allen, the agent at White Earth, to forward to Washington?

A. No, sir; not a lease.

X Q. 119. What was it?

A. An application for a lease.

X Q. 120. That included about 160 acres, did it not?

Objected by complainants as incompetent, irrelevant and immaterial, and not the best evidence of what it included.

A. Yes, sir.

X Q. 121. That lease has been lost—that application, rather?

A. Well; I don't know; it very mysteriously disappeared.

X Q. 122. You don't know where it is?

A. No; you might know.

X Q. 123. No; I don't know; I never saw or heard of it.

A. I say you might have; I don't know.

X Q. 124. Well, I don't know where it is. We will have no insinuations here.

A. Well, that is all right; you must not insinuate on me, either.

X Q. 125. That included a good deal more land than either of these leases?

A. It included about 140 acres.

Objected to by complainants as not the best evidence as to what it included and the same objection as before.

X Q. 126. That you procured when?

A. I never procured that.

X Q. 127. The application—when did you make the application?

A. I couldn't tell you; some time in April, I think.

X Q. 128. Of what year?

A. 1894.

X Q. 129. Long before Mr. Jones made this lease with Moose Dung?

41 A. Yes, it was some time before.

X Q. 130. You had never heard of Mr. Jones at that time, had you?

A. I don't recollect whether I did or not.

X Q. 131. Where did you make that application?

A. At White Earth.

X Q. 132. Who joined in the application?

A. Moose Dung.

X Q. 133. And who else?

A. Myself and my brother—P. and J. Meehan.

X Q. 134. Now, that lease included lot one that is in question in this case?

A. It wasn't a lease.

X Q. 135. I mean that application?

The same objection made by complainants as before.

X Q. 136. Didn't you draw up a lease at that time and then make an application to have that lease approved?

A. No, sir; it was an application for a lease.

X Q. 137. You never made any effort to notify Mr. Jones in any way that you had this lease of ten feet and claimed under it, did you?

Objected to by complainants as incompetent, irrelevant, and immaterial.

A. I don't recollect that I did. I don't think Mr. Jones came and told me what his business was.

X Q. 138. You opposed the approval of the Jones lease by the department, did you?

A. Yes, sir.

The same objection made by the complainants.

X Q. 139. And you asked the department to approve the leases that you had made subsequent to the Jones lease, did you?

The same objection made by the complainants.

A. I never asked the Interior Department to make it.

X Q. 140. Well, the Commissioner of Indian Affairs?

A. Yes; I asked him to approve it, but not the Interior Department.

Redirect examination.

By Mr. JUDGE:

Q. 141. At any time since this lease was made, or at any time whatever, did you or the other lessee named in the lease, James Meehan—I am speaking now of the ten-foot lease of 1891—ever make any application or take any measures to have said lease approved by the Interior Department or any officer of the Government of the United States?

Objected to by respondent, as the record would be the better evidence.

A. No, sir; we never have made any application to anybody to approve that lease.

Q. 142. Speaking of this application that was made in the early spring of 1894 for a lease, concerning which you have testified on cross-examination, what was done with that application?

A. The application—I sent it to Mr. Allen.

Q. 143. The Indian agent?

A. The Indian agent, and he held it there some time, and I wrote to Washington to some parties there asking them if such an application had been forwarded for approval, and he informed me
42 it never came to Washington. I then went to White Earth and asked Mr. Allen if he had received it, and he said he had. I asked him why he hadn't passed on it, forwarded it or returned it to me or notified me. Well, he said the reason he hadn't forwarded it he had been notified by some people from Thief River Falls that it wasn't satisfactory to them. I then asked Mr. Allen if he was there in the interest of the Indian, and I went on then and showed him what the conditions were of affairs, and then he promised to send this application forward the next day, and the following day he put the application in my presence and a map I gave him that I had drawn on oil paper into the drawer, and the following morning when I went to send the application away the application was gone, but the map of the land still staid there, and he then notified me at once that it had been mislaid or taken out of his office, and if I would send in another application he would forward it immediately.

The respondent moves to strike the answer out as incompetent, irrelevant, and immaterial and hearsay.

Q. 144. What, if anything, had occurred in the meantime between the time that you deposited the lease with the Indian agent and the time when he finally advised you to send in another application?

A. I found that Mr. Jones and Kellogg had come up and got

something in the shape of a lease or application for a lease between those times.

Q. 145. From the Indian?

A. From the Indian.

Respondent moves to strike out the answer as immaterial and incompetent.

Q. 146. Did you at any time make any effort to conceal from Mr. Jones or anybody else the fact that you had this ten-foot lease of 1891?

Objected to by respondent as incompetent, irrelevant, and immaterial.

A. No, sir; everybody in that country that lived around Thief River knew I had the lease of the ten-foot strip.

Q. 147. It was a notorious fact?

A. Yes; from the first day I got it. I didn't have the lease a week until everybody that lived in the village knewed I had the lease of the ten-foot strip, and nobody objected to it then.

Q. 148. What effort did you take to conceal from Mr. Jones or anybody else the fact that you were in possession of that land under your ten-foot lease?

Mr. KELLOGG: I move to strike out the answer.

A. I never concealed it from Mr. Jones or anybody else. On the contrary, I always claimed to have the land.

Mr. KELLOGG: I object to the last question as incompetent, irrelevant, and immaterial.

Q. 149. Now, you are familiar with the tract of land containing approximately 640 acres there, of which this is a small portion, known as the Moose Dung land?

A. Yes; I know where it all is.

Q. 150. How long have you known it?

A. About five years.

43 Q. 151. During that time who has been in possession of it, to your knowledge, other than yourself, your firm, of this small strip?

A. Chief Moose Dung has always been in possession and always claimed the ownership of it.

Q. 152. What acts of ownership has he exercised over it during that period?

A. Always leasing it and selling sand off of it. He has got a sand pit which he sells sand to people around down there, and leases the sand pit at times to parties; and also he has leased for the past three or four years, three years, he has leased the ground for grazing ground. Also he has leased it this season again.

Q. 153. Has any one, to your knowledge, ever interfered in any way with his rights over that land?

A. Not that I know of. Never heard of anything of the kind.

Q. 154. What is the general understanding in the community in

that part of the country with reference to the rights of Moose Dung in the land?

Objected to by respondent as incompetent, irrelevant, and immaterial and an improper question.

A. It was always called Moose Dung's section, and supposed to be owned by Chief Moose Dung. That was always the understanding.

The respondent moves to strike out the answer as incompetent, irrelevant, and immaterial.

Q. 155. During the five years that you have been there has there ever been any one in possession of any portion of that 640 acres other than Moose Dung and yourself and your firm and those claiming under Moose Dung as tenants?

Objected to by respondent as incompetent, irrelevant, and immaterial.

A. A Mr. Cooper went on there once and thought he would squat on his section number one and Moose Dung ordered him off, and he went off it again; at least he wrote the department, I suppose, wanting to know if it belonged to Moose Dung, or if it was land that could be taken. He built a shanty on and moved off again. I also wrote the department, after I was there about a year, asking the condition of that fraction and some other fractions, and they wrote me back that it was owned by Chief Moose Dung.

Q. 156. They wrote you that it was owned by Chief Moose Dung?

A. Yes, sir.

Q. 157. Where is that letter?

The respondent moves to strike out the answer as incompetent, irrelevant, and immaterial, as the letter would be better evidence.

A. I haven't got the letter present. That was under, I think, the administration of Cleveland—first administration.

Q. 158. The letter is lost by this time, is it not?

A. Yes, sir. My letter, I suppose, would be found in the department, likely. The letter from the department, I never paid any more attention to it after I found it was owned by Moose Dung. I thought there was fractions. I moved onto it and again moved off.

Respondent moves to strike out the answer of the witness as incompetent, irrelevant, and immaterial and hearsay.

44 Q. 159. This letter that you got from the department stating that Moose Dung owned the land is lost now, is it?

A. Yes, sir.

Objected to as leading by respondent.

Q. 160. Well, where is that letter that you got from the department?

A. It is lost; I never kept it; I thought it was of no value. As he owned it, I didn't seek any further.

Q. 161. Did you rely in any way upon the statements contained

in that letter when dealing with Moose Dung with reference to this land?

Objected to by respondent as incompetent, irrelevant, and immaterial and assuming that he had such a letter and the contents stated; the letter would be the better evidence.

A. I relied on it that it was his land, because they had written me from the department that it was his land. It was from the Land Commissioner.

Q. 162. Was this letter containing that statement which you say is now lost received before or after you made the lease with Moose Dung?

Objected to by respondent as leading and assuming that it is lost.

A. It was received before I made the lease with Moose Dung; I think nearly nine or ten months; some time between eight months and a year prior to my making this lease.

Q. 163. What effect, if any, did that letter have upon you with reference to fixing in your mind any impression with reference to the rights of Moose Dung in that land?

Objected to by respondent as incompetent, irrelevant, and immaterial.

A. It gave me the impression he was the owner of the land, because they had written to that effect.

Respondent moves to strike out the answer as hearsay; the letter would be the better evidence of the contents.

Recross-examination.

By Mr. KELLOGG:

X Q. 141. Where is this original lease of the ten feet here in question?

A. It is in Washington; it is filed with the papers that we filed. It was a part of the papers we filed in the investigation when you were at Thief River.

X Q. 142. You didn't claim anything in that proceeding on this lease?

A. Yes; we put in that lease as evidence of our owning the land at that time.

X Q. 143. And asked its approval?

A. No; we didn't ask its approval.

X Q. 144. But you put it in there.

A. We put it in as evidence.

X Q. 145. And the department could do what they chose with it?

A. No; we didn't ask them anything about that; we put it in as evidence to show we had a lease of the property.

45 X Q. 146. That was then taken into consideration in disapproving your lease that was gotten subsequent to the Jones lease, was it?

A. We didn't ask the approval of the prior lease. We sent it in

as evidence, as part of the papers filed, to show that we had this lease of it. We didn't ask the department to approve of the lease of the ten-foot strip; they never were asked to.

X Q. 147. Because you didn't think it was of any account, I suppose?

A. No, I wouldn't state that. I thought it was of account then, sir; always valued it.

X Q. 148. You opposed actively the approval of the Jones lease, did you?

A. Yes, I opposed the approval of the Jones lease.

X Q. 149. And asked them to approve your lease at the same time?

A. I asked them to approve the lease that I got in 1894, July.

X Q. 150. August?

A. August, 1894, I think it was.

X Q. 151. Yes, your lease was dated the 10th of August.

A. Some time between the latter part of July and August. Those dates I didn't keep in my head, because I didn't suppose they would be of much importance.

Redirect examination.

By Mr. JUDGE:

Q. 164. You having obtained that lease in August, 1894, and Mr. Jones having taken proceedings in Washington to have his lease approved by the department, the real purpose of your seeking an approval of your subsequent lease was, was it not, to take an approval for what it was worth of your lease?

A. Yes, sir.

Objected to by respondent as incompetent, irrelevant, and immaterial, and an improper question and not rebuttal.

A. And wanted to get a lease of the whole fraction. I had started to do that before Mr. Jones had started to get his lease which is in evidence here.

Q. 165. You introduced in evidence then, before the department, the ten-foot lease for the purpose of showing a reason why the department in approving these subsequent leases should give you the preference. Wasn't that the real purpose of the introduction of the ten-foot lease in evidence?

Objected to by respondent as incompetent, irrelevant and immaterial, leading, and an improper question.

A. Yes, and to show the department that I had a lease of it.

Recross-examination.

By Mr. KELLOGG:

X Q. 152. This application for a lease made prior to the Jones lease was for mining purposes?

A. Yes, sir. I expected to get clay there to make brick. There was some fireclay there.

Mr. KELLOGG: I move to strike out that last answer as not responsive to the question and immaterial.

46 Further proceedings in this case were here adjourned, to be resumed at the village of Thief River Falls, in the State of Minnesota, on Monday, the 21st day of May, A. D. 1895.

Title of cause.

In equity.

Depositions of witnesses on behalf of the complainants, taken at the office of Meehan Brothers, at the village of Thief River Falls, in the State of Minnesota, on Monday, the 21st day of May, 1895, before Richard A. Mabey, special examiner in this cause, pursuant to a stipulation and order of court on file herein.

Present on behalf of the complainants, Orville Rinehart, Esq.; on behalf of the respondent, Frank F. Davis, Esq.

And thereupon the following proceedings were had, to wit:

JAMES MEEHAN, a witness produced on behalf of the complainants, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Rinehart:

Q. 1. You are one of the complainants in this action?

A. Yes, sir; I am.

Q. 2. And know the premises in controversy, the ten-foot strip along lot one?

A. Yes, sir.

Q. 3. You may state at what time you first entered upon the ten-foot strip under the lease that is set out in the complaint.

A. Well, it was the fall of 1891.

Q. 4. What did you do on the premises at that time?

A. Well, we drove our logs in here. We occupied the place as storage at that time and had a lot of oak piling pulled out on the shore along through; didn't want to leave them in the water where they would sink. We pulled them out on the shore, besides occupying it as storage for our logs.

Q. 5. What else did you do between that time and the 15th or 27th of December?

A. The next winter—that would be the winter of 1892—we drove the piling for our booms. We drove the piling for our booms during the winter of 1892.

Q. 6. Did you drive them on the ten-foot strip?

A. Yes, sir. Well, we drove them in the river, on the portion of the river that we considered belongs to the ten-foot strip, within 30 feet of the shore.

Q. 7. Inside of the center of the stream?

A. Yes, sir.

Q. 8. Next to the ten-foot strip?

A. Next to the ten-foot strip, at an average of 30 or 40 feet, to

leave a passageway on that side, and we continuously occupied it for our boom timber—that is, in the fall of the year. We pulled our boom timber out and pulled it onto this strip to keep it out of the water for the winter, and in the spring put it on the piers or piles.

Q. 9. Then you used it in that way up until the month of December, 1894?

47 A. Yes, sir.

Q. 10. What did you do during that month on the property?

A. Well, we put up a fence. We commenced putting the fence and building on there the 11th day of December. It was on Friday, the 14th of December, 1894.

Q. 11. What was the fence that you speak of? Where was that built?

A. We put in a cedar post and three wires—barbed wire—on the ten-foot strip.

Q. 12. Along which side of it—the side adjoining lot one?

A. Well, as close to the west edge of the strip—you see the river runs north and south, of course, and the strip lays on the west side, on the west shore of the river.

Q. 13. Towards the balance of lot one?

A. Yes, sir. The strip lays on the west bank of the river, and we fenced along the strip so as to be sure to keep on the strip.

Q. 14. The entire length of the strip?

A. The entire length of the strip.

Q. 15. And what was the building that you put up there at that time?

A. Well, I am not exactly certain as to the size of the building. I think it is 12 x 14 or 12 x 16, and it is shingled with good shingles and sealed inside. There is ship lath—

Q. 16. Well, is it fit for human habitation?

A. Oh, it is a good, warm building; the warmest building they had last winter around here, I guess.

Q. 17. From the 14th of December has there been anybody on the strip in actual possession?

A. Yes; there has been one man about all the time and two men part of the time, that has been in the building and slept there every night and had their bed in there.

Q. 18. Were they in your employ?

A. Yes, sir. Their bed is in there now; a stove and everything like that in it.

Q. 19. Were they there for the purpose of holding possession for you of the ten-foot strip?

A. Yes, sir; that is what we kept them there for. Well, they worked for us at the same time and slept there.

Cross-examination.

By Mr. DAVIS:

X Q. 1. Mr. Meehan, what did you build that building for?

A. Well, we had two objects in view, I guess. One was for the purpose of possession and the other was for to hold tools. When we work around we always have to have some tools, chains and ropes there, and we kept those there. That was our purpose, and the other purpose I stated to you.

X Q. 2. Well, the chief and important and primary purpose was to hold possession, was it not?

A. Yes, sir.

X Q. 3. Of course, after the building was constructed you made use of it as a storage-house; but the original idea was to
48 maintain possession of the building?

A. Yes, sir.

X Q. 4. Now, that building as it stands partially rests upon the bank and partially upon the piling driven into the river, does it not?

A. Yes, sir.

X Q. 5. About how much of it projects over the water line of the bank into the river?

A. I should judge one-third of it; probably not more than a fourth. There may be a little more room outside of it, but we wanted to be sure and be on the ten-foot strip.

X Q. 6. This barb-wire fence consists of how many strands of wire?

A. Well, three strands.

X Q. 7. Attached to posts?

A. Yes, sir.

X Q. 8. Driven into the ground or set into the ground about how far apart?

A. They are various distances; some of them 20 feet and some of them probably 30 and some more or less; I don't know exactly.

X Q. 9. That barbed-wire fence runs the entire length of the ten-foot strip and separates the ten-foot strip from the balance of the property?

A. Well, as near as we could. As I stated before, we aimed to keep onto the ten-foot strip—that is, I don't think we occupied—that it takes all of the ten-foot strip, but it gets as close as possible to it. We didn't want to get off from it.

X Q. 10. There was no survey to determine that exact line, was there, when you constructed that fence?

A. No. We measured from the water edge, and the water was rather low at the time. It was in the fall of the year after it was froze up.

X Q. 11. With the exception of the building you have mentioned and the barbed-wire fence, both of which were constructed in the winter of 1894, and the piles which rest under the building and the logs on which they are driven in the river, there are no other evidences of occupancy on your part?

A. Well, we have always had boom timber on the shore; we have used it for storing our boom timber and holding it on the shore all the time.

X Q. 12. I mean no other permanent structures have been erected except those that I mentioned.

A. And the piling.

X Q. 13. And the piling; I say that.

A. Yes, sir.

X Q. 14. Now, this piling that you speak of consists of logs driven in the bed of the river?

A. This oak piling?

X Q. 15. Upright, are they?

A. Yes, sir; oak piling, such as is used anywhere for piling.

X Q. 16. We will say it is a log. We call it a log, driven upright in the bed of the river.

49 A. Yes; it is an oak log.

X Q. 17. They are put how far apart?

A. Made to be about 50 feet apart; maybe a little more or less.

X Q. 18. In front of the building which you have built? Do you recall how many exactly in front of it?

A. Oh, they run up and down, along. I couldn't say just how many; I never counted them.

X Q. 19. As a matter of fact, there is just one in front of the building, isn't there; right out in front of it?

A. I don't know whether it is just in front of it. I couldn't say whether there is any just immediately in front of it or not.

X Q. 20. Very close to it?

A. Somewhere there; yes.

X Q. 21. The next piling would be up the river at least 50 feet and the next would be at least 50 feet down?

A. Yes; aimed to be 50 feet apart.

X Q. 22. Do you know where the Jones iron stakes were put as the prospective place for that mill?

A. No, sir. I never saw an iron stake there. I saw some wooden stakes in that vicinity, but never saw an iron stake, and I have been there a good deal.

X Q. 23. Well, these wooden stakes—did you understand that they located the prospective place for the mill?

A. I don't know whether they located them or how they come there.

X Q. 24. No; but whether that was the idea of it. Where the mill was to be constructed is where those stakes were?

A. It is close by there, but I wouldn't say whether it was right in front of them or not.

X Q. 26. You couldn't say it was not, as a matter of fact, right in front of the place that had been staked out as the place to build the Jones mill?

A. No; I couldn't say. When we built the building I didn't notice more than two or three stakes, and I couldn't say whether the building is immediately in front of them or not.

X Q. 27. How did you happen to select this exact place to build that building?

A. Well, it would be the place we should put it whether there had been any stakes there or not, because it is just about where the

boat landing used to be and where Burhart used to keep his workshop, and it was the most proper place we thought to put the building and the handiest place. Burhart had his workshop there, and it had been moved out of that, and it was about the place we should put it, anyhow.

X Q. 28. Was there any greater depth of water in front of that building than just below it or just above it?

A. No. I don't know as there is; the water is about the same along there.

X Q. 29. Any difference in the shore line?

A. Yes; there is a difference in that.

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X Q. 30. Where the building stands isn't the bank higher from the surface of the water to the top of the bank than it is either below or above?

A. It isn't so high as it is above, I don't think, but it is higher than it is below; that was one reason why we put it there, because it was lower than we wanted to put it up later, and I think it is higher above; that would be one of the objects not putting it further up.

X Q. 31. This boom timber which you say you had out upon the bank consists of logs strung together and attached to those piles for the purpose of keeping your logs in shape in the river. Is that what you mean by boom timber?

A. Yes, sir; keeping the logs from going down the river.

X Q. 32. The string of logs in the winter time you would draw out upon the bank or up against the bank?

A. We drew out on the shore line; yes, sir.

X Q. 33. That boom timber that you drew out there—was that the old boom timber that you used, or you had some new stakes for them?

A. The same as we used since 1891; the same boom timber.

X Q. 34. So that you didn't put upon the land, using it for storage purposes, any new boom timber?

A. Well, there might be some. I wouldn't say we hadn't no new timber, because there was some came in every year and we were changing them around. It is more than likely there was some timber that came in in 1894, put on there in the fall of 1894.

X Q. 35. Do you remember that as a fact?

A. No. I wouldn't swear positively to it, but that is likely to be the case. I think that is so. I wouldn't swear positively there was any.

X Q. 36. When you drew these booms to the bank for the purpose of keeping them there, were they drawn out upon the shore or just drawn close to the bank?

A. Drawn out on the shore, sir, with a team. One end might lay floating in the water; the rest was on the bank.

X Q. 37. These logs that are driven in the bed of the river which you call piling are about how far distant from the bank?

A. They range from 30 to 40 feet, and maybe right where the little building is they may be 50 or 60 feet out, because when we drove them we drove them over there from the shore in order to

give Burhart a chance to land his boat there more than we did anything else.

X Q. 38. Do you know the average depth of the water they are driven in front of the ten-foot strip?

A. The water is from ten to twelve feet on an average; some places nine feet *nine feet* and some places twelve feet.

X Q. 39. That would be about the average depth of the water between the bank and the point where the piling are driven in the bed of the stream?

A. Yes, sir. The water is just as deep at the bank as it is out 30 or 40 feet.

X Q. 40. How wide is the river opposite this ten-foot strip?

A. That I couldn't swear to.

X Q. 41. Have you an estimate in mind?

51 A. It may be 250 or 300 feet.

X Q. 42. Is the depth of water on the other side the same as on this side, or is the deeper channel on this side?

A. The deeper side is on this side; that is the reason why we put the passageway on this side.

X Q. 43. Is the current nearer the ten-foot strip or the opposite bank?

A. The current is on the ten-foot-strip side. It come out of Thief river and tore our piling out; that shows the current is on that side. The current is naturally there, anyhow.

X Q. 44. Mr. Rinehart, your counsel, asked you what occupancy you had made of those premises under this lease mentioned in your bill. Did you hold any other lease or papers at the time, 1891, when you commenced this occupancy?

A. Did we hold any other papers, you say?

X Q. 45. Yes; from Mon-si-moh.

A. This lease; that is all.

X Q. 46. This is the only paper that you held under which you claimed the right of occupancy in 1891?

A. Yes, sir; that is all.

X Q. 47. Did you subsequently to that time get any other papers from Mon-si-moh under which you claim to occupy and possess there?

A. No; not anything we claim to occupy and possess under.

X Q. 48. You got some papers of some kind, some leases or privileges?

A. Well, we got a lease for a longer term, but that we never pretended to occupy or hold or considered that of any effect.

X Q. 49. When did you get that?

A. Well, that I couldn't swear to, neither; I don't know the time.

X Q. 50. Why did you get it?

A. Well, we thought we would like to have a longer lease; that was all.

X Q. 51. That lease—was it ever made a matter of record anywhere—the second one?

A. No, sir; I think not.

Redirect examination.

By Mr. RINEHART:

Q. 20. This oak piling—on which side of the center of the stream are they?

A. They are on the west side.

Q. 21. On the ten-foot strip at all?

A. Yes, sir.

Q. 22. And are they driven in the ordinary manner as driven by lumbermen in booming logs?

A. Yes, sir; they are driven in the same manner that piling is driven all over the country for the purpose of holding our logs.

Q. 23. And are they driven as close to the shore as are driven by lumbermen in like situations?

Objected to by respondent as incompetent, irrelevant, and immaterial.

52 A. Yes, sir. We have handled logs and lumber in the rivers in Wisconsin for 28 or 30 years, and we had piles and boom there, and know hundreds of others who had them, and they are driven in the same way, and about as far from shore, as they generally do where room is limited; that is, we drove them as close to the shore as we thought the law would allow us and leave a lawful passage, you understand.

The respondent moves to strike out the answer for the reason stated in the objection.

Q. 24. You say you have been in the lumber business and constructing booms and driving piles in the river for the last 28 years?

A. Yes, sir; 30 years anyhow.

Q. 25. In what State?

A. In the State of Wisconsin and Minnesota.

Q. 26. And you have seen the piles and booms upon rivers generally?

A. Different rivers, yes, sir. I have seen them the whole length of the Wisconsin river where there is any improvements, and I have seen them in Minneapolis, and I have seen them in the Chippewa river.

Q. 27. Do you know the general manner of the construction of booms and driving of piles by men exercising shore rights along those rivers?

A. Well, I think I do; that has been my business all my life since I have been able to do any business.

Q. 28. Are these driven in the same manner that others are driven in like situations?

Objected to by respondent as incompetent, irrelevant, and immaterial.

A. Yes, sir.

The respondent moves to strike out the answer for the reason stated in the objection.

Q. 29. I will ask you whether or not by the custom of lumbermen in booming logs and driving piles, piles driven in a like situation with these would be considered as pertaining to the shore right?

Objected to by respondent as incompetent, irrelevant, and immaterial.

A. Yes, sir.

The respondent moves to strike out the answer for the reason stated in the objection.

Q. 30. I will ask you whether a lumberman or person dealing with shore rights in like situations with this, by the custom and practice of lumbermen, whether or not he would naturally look to the position or proprietorship of the shore right from seeing piles driven in such proximity to the shore as these are?

Objected to by respondent as incompetent, irrelevant, and immaterial.

A. I would consider that any man that was conversant with lumber business would know that no man would drive piles as near to the shore as that without he had the shore right.

Respondent moves to strike out the answer for the reason stated in the objection.

Q. 31. That is the custom of lumbermen?

Objected to by respondent as incompetent, irrelevant and immaterial.

53 A. Yes, sir; any one would know he had no right to drive the piles any nearer than the middle of the river without he owned the shore right.

The respondent moves to strike out the answer for the reason stated in the objection.

Q. 32. Would a lumberman naturally then look to the title to the shore if he knew a certain other lumberman had his piles in the river?

Objected to by respondent as incompetent, irrelevant, and immaterial.

A. He should naturally expect that the man owned the shore right.

Respondent moves to strike out the answer for the reason stated in the objection.

JOHN GEORGE MORRISON, J. G. MORRISON, a witness produced on behalf of the complainants, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this case, deposes as follows in answer to interrogatories propounded to him by Mr. Rinehart:

Q. 1. How old are you?

A. I am 55 years old last April the 29th.

Q. 2. Of what nationality?

A. I am a Scotch half-breed.

Q. 3. What do you mean by a half-breed—half Chippewa Indian?

A. I have a quarter of Chippewa blood.

Q. 4. Where do you reside?

A. I reside at White Earth Agency Indian reservation. I live now to Red Lake agency, doing business up there.

Q. 5. What language do you speak?

A. I speak the English, Chippewa, and French. My first language was Chippewa, second language was French, and I learned English afterwards when I went to school.

Q. 6. How long have you resided among the Chippewa Indians?

A. I was raised right amongst the Indians.

Q. 7. You have lived among them all your life, have you?

A. Yes, sir.

Q. 8. Were you present at the making of the treaty at the Old Crossing of Red Lake river between the United States and Red Lake band of Chippewa Indians in 1863?

A. Yes, sir; I was.

Q. 9. What time of the year was that treaty concluded?

A. I don't remember exactly when we made the first treaty. We was there two or three times and didn't come to no understanding.

Q. 10. Well, were you present at the negotiations which resulted in the signing of the treaty that was finally made?

A. Yes, sir.

Q. 11. At that time did you know one Mon-si-moh, who was then a chief of the Red Lake band of Chippewa Indians?

A. Yes, sir.

Q. 12. How long had you known him?

A. I had known him ever since I was a little boy; met him off and on about every year. He used to come and visit my old father down to Crow Wing. We was then living at Crow Wing, and my old father was an old Indian trader in this country.

54 Q. 13. Did you know where Mon-si-moh lived?

A. Yes, sir.

Q. 14. Had you ever been at Mon-si-moh's place before this treaty was made?

A. Yes, sir.

Q. 15. How long before that time?

A. I had visited his village up here at the mouth of Thief river about two years before this treaty was made.

Q. 16. Where was Mon-si-moh living at that time?

A. He was living right here at the mouth of this Thief river.

Q. 17. On which side of Thief river?

A. On the west side of the river—that is, we called it the west side.

Q. 18. On the side where the village of Thief River Falls now is?

A. Yes, sir; right above here.

Q. 19. Do you know where the present land that is claimed by Moose Dung is located?

A. Yes, sir.

Q. 20. You may state where as regards that land old Mon-si-moh lived.

A. It is right at the mouth of Thief river.

Q. 21. Did old Mon-si-moh or not live upon the same land that is now owned by Moose Dung?

A. Old Mon-si-moh? Well, he had his village when I come there and seen him before we went to the treaty, and I was sent as a messenger to notify the Indians to go down and make the treaty, and I come and visit him there. He was then living right at the mouth of the Thief river right here.

Q. 22. Was it on the same land that his son claims now?

Mr. DAVIS: I object to that as incompetent, irrelevant, and immaterial. It antedates this treaty, and whatever rights are claimed in this lawsuit by the bill and the answer arise out of that treaty, if at all, and any prior occupation will be entirely immaterial.

A. Yes, sir.

Mr. DAVIS: I move to strike out the answer relative to Mon-si-moh's occupancy, the elder Mon-si-moh, of any part of these premises or being upon them, for the same reasons made in the objection.

Q. 23. Was all of Mon-si-moh's village on the west side of Thief river, and his band?

A. Yes, sir; they were living then on this side of the river when I visited them that year.

Mr. DAVIS: And let my objection cover every inquiry as to any testimony upon that point.

Mr. RINEHART: When you make up the record you may look it over and interpose such objections and motions to strike out as you think are necessary to save your rights.

Mr. DAVIS: Very well, and anything that you want is all right. It applies to cross-examination by myself.

Q. 24. Do you remember how much land old Mon-si-moh occupied himself, him and his family?

55 A. At the time that I visited them?

Q. 25. Yes.

A. Well, of course, they were claiming the whole country then.

Q. 26. But I mean how much was there where Mon-si-moh and his family lived?

A. They had their gardens right here, right above here, just at the mouth of the river; they had a fish trap down here, and they had their gardens right back, and they had the village right at the mouth of the river.

Q. 27. Do you know where the shanties came down here on this ten-foot strip we are talking about—Meehan's shanties?

A. Yes, sir.

Q. 28. Was that anywhere near the fish trap?

A. That is just about where the fish trap was; just a little above.

Q. 29. Those were the fish traps for Mon-si-moh's entire band.

A. Yes, sir; they were catching fish for their living.

Q. 30. What part did you take in the negotiation of this treaty at the Red Lake crossing?

A. I was a special interpreter. I didn't take any part only as an interpreter there at the crossing.

Q. 31. Did you hear the conversations that occurred between the commissioners for the United States and the chief and head men of the Chippewa Indians?

A. I was there present most of the time.

Q. 32. Did you hear any conversation or any speeches that were made at that time concerning this land claimed by Mon-si-moh?

A. I didn't hear about the land business at that time at that crossing. I probably wasn't there at the time they talked about it; I didn't hear that part of it.

Q. 33. This treaty concluded at the Red Lake crossing was subsequently ratified by a supplementary treaty made in the city of Washington, was it not?

A. Yes, sir.

Q. 34. Were you present at the making of that ratification?

A. I was present there at the time they made the agreement, right there, and made the treaty in Washington, at the Commissioner of Indian Affairs' office.

Q. 35. Was Mon-si-moh present at that time?

A. Yes, sir.

Q. 36. What other persons were present?

A. Well, there was about 42 in our delegation, and there was only—there was four of these gentlemen here, Mr. Bottieau, the head chief over there (Leading Father); the second chief, May-dwa-gun-on-ind; Clem Beauleau over there, that is present here.

Q. 37. That many were there at that time?

A. Yes, sir; at that time.

Q. 38. At that time was there anything said between the commissioner or commissioners of the United States and any of these Indian chiefs relative to this land claimed by Mon-si-moh?

A. Yes, sir.

56 Q. 39. Who was that conversation had by—who spoke about it?

A. The Chief Mon-si-moh was the man that spoke. There was to be some money paid to the chief.

Q. 40. Who did he speak to?

A. To the Commissioner of Indian Affairs.

Q. 41. What did Mon-si-moh say?

Mr. DAVIS: Objected to as incompetent, immaterial, and irrelevant, and that any declaration made by any of the parties to this treaty is merged in the treaty, and no parol evidence is admitted to change, modify, or interpret, or indicate the intention of a treaty, or of this treaty in particular.

Q. 42. And who did he speak to?

A. It was the winding up of the treaty. There was some money to be paid to the Indians; the old man, the head chief here, was to get \$5,000, and I don't really remember how much he was to get or

how much Leading Father was to get, but anyway Mon-si-moh said he didn't want no money; that he wanted a tract of land, one section of land at the mouth of Thief river. He said "the mouth of Thief river, the side that the sun sets." That is the very words he said. "I want that for myself; I don't want no money; I want the land; I will have more use for that land. The money," he says, "is no object to me; I can't use money," he says. "I don't know enough," he says, "to use money. The white men will cheat me out of that money." These very words he said, "I want the land; I will use the land."

Q. 43. Was he speaking in the Chippewa language?

A. Yes, sir.

Q. 44. And you understood the Chippewa language?

A. Yes, sir.

Q. 45. Was that interpreted to the Commissioner of Indian Affairs?

A. Yes, sir; it was interpreted by the United States interpreter, Paul Beaulieu.

Q. 46. Was it correctly interpreted?

A. Yes, sir.

Q. 47. What response or answer did the Commissioner of Indian Affairs make to that speech?

A. He said that was right. He told Mon-si-moh, "You are sensible; that is right. You shall have that piece of land."

Q. 48. That was spoken in the English language?

A. And interpreted in Chippewa.

Q. 49. Correctly to Mon-si-moh?

A. Yes, sir; I will state furthermore what he said. Then Mon-si-moh said, then he says, "My great father, I am satisfied," and he sat down.

Mr. DAVIS: I make the same motion as before, to strike out all this interview.

Q. 50. After these conversations were had then the supplementary treaty was signed in Washington?

A. Yes, sir.

Q. 51. Did you know Mon-si-moh after that time?

A. Yes, sir.

Q. 52. How many years?

57 A. I know him until he died.

Q. 53. Did you ever visit his home after that?

A. I visit him twice after that.

Q. 54. About what time?

A. About 1867, I think, if I remember right.

Q. 55. Where was he then living?

A. He was living right up here.

Q. 56. On the land that he asked for?

A. Yes, sir; right at the mouth. He had a garden there.

Q. 57. Were you acquainted with the laws, customs, and usages of the Chippewa Indians at that time in their dealings among themselves?

A. Yes, sir.

Q. 58. What was Mon-si-moh—was he a chief?

A. Yes, sir; he was a chief; he owned a band of Indians; what we call a chief; had a medal; had a medal given him by President Lincoln. I was present when he got it.

Q. 59. What authority did he have over this band of Indians?

A. He was just like you might say a captain with his company; he had his band.

Q. 60. Did they obey him?

A. Yes, sir; they obeyed him; of course obeyed him; he was the head chief for that band.

Q. 61. And that band occupied a section of country about the mouth of Thieving river or a tract of country?

A. Yes; the old chief lived right on this side and half of his band lived on the other side. They just occupied it, hunting and roving all the time, and the old man always lived on that piece of land right at the mouth of the river.

Q. 62. I will ask you, according to the laws, customs, and usages of the Chippewa Indians, how a chief like Mon-si-moh could select a home or a piece of land for himself to live on.

Mr. DAVIS: The same objection.

A. Well, he always made this his home.

Q. 63. How could he do it? Did he have the power to do it himself, to select a piece of land?

A. I think he had; yes, sir; according to Indian custom I think he had a right to select a piece of land where he would live.

Q. 64. Speaking for his own gardens and teepee?

A. Yes, sir; that is what I say. He had a right to select a piece of land for himself like the old chief up there to the lake; them two chiefs there.

Q. 65. That was the custom, was it, among the chiefs of the Chippewas?

A. Yes, sir; that is the custom now.

Q. 66. Did they have the first right of selection of a place to build their own home on in those days, to erect their teepee?

A. Yes, sir; and nobody to interfere, even amongst themselves; that is something similar to the white people when they go and take a claim.

Q. 67. According to those laws, customs, and usages, when
58 an Indian chief had selected the particular piece of ground upon which he would like his home, had the band of Indians any right or any voice to say whether he should change that or move off from it?

A. No, sir; he had the sole right to the place; he made that his home; he selects that and makes it his home; he buries his dead there, and after he buries his dead he calls that his home, and there is where he stays; that is the Indian custom.

Q. 68. Then the chief having made such a selection and occupied it in that way, I will ask you, upon the chief's death, according to

such customs and usages of the Chippewa Indians, who would succeed to that land?

A. His oldest son.

Q. 69. And what office would his oldest son succeed to, if any?

A. If he was dead, he would have the whole inheritance, what he had left.

Q. 70. Would he succeed to the office and powers of the chief?

A. Yes, sir.

Q. 71. He would become then the chief of the band?

A. Yes, sir; if he had a medal he takes that medal; that medal belongs to the oldest boy of the family, and he wears that.

Q. 72. Then would the old chief be buried upon this land which he claims, ordinarily?

A. Well, it is according to where he would die; if he requested to be buried on it there he would be.

Q. 73. Are you acquainted, Mr. Morrison, with the words and forms of expression used by the Chippewa Indians among themselves when they give anything to each other, to make a present, to give?

A. Yes, sir.

Q. 74. Are you acquainted with the words or forms of expression that are used by them when one of them grants, or, as we would say in English, bargains or sells, something to another of the tribe?

A. Yes, sir.

Q. 75. Are you acquainted with the Chippewa forms of expression and the words used by them to indicate, for instance, the setting apart by the Indians to one of their number of any particular thing or piece of land or any articles?

A. Yes, sir.

Q. 76. Now, I will ask you whether or not in all these that I have named whether all Indians use any common form of expression, any one form of expression or words, which could convey two of these meanings that I have mentioned, or all of them, among themselves—that is, whether the Indian form of expression or word for a grant or a gift or a setting apart are similar or not. You can simply state whether they are similar.

A. Well, there is two or three words similar, but then it means the same thing; we understand it amongst the Indians just one word; of course there is different ways of saying them in Chippewa.

Q. 77. Well, I will ask you whether the interpretation into Chippewa of the English words "set apart" would be similar
59 or the same to the interpretation into Chippewa from English of the word "grant" or "give."

Mr. DAVIS: The same objection.

A. Give or grant?

Q. 78. Yes.

A. Yes; or set apart. It is lend. That is it.

Q. 79. Will you give it to the examiner so that he may get it into syllables—the pronunciation of the Chippewa words which would

signify or mean to them the same as those three words that I have spoken to you?

A. They never say "I give" or "I sell" or "give," but they say "I lend"—"en-dow-e-wan"—that is, "I lend it." They never say "I set it apart" or "give it away"—that is, where the Indians always when they give anything it is gone, don't you see? But "en-dow-e-wan" is lend.

Q. 80. If I were to say to you, "I set apart this table to you for your use" and you were to interpret that into Chippewa, speaking of "I set this apart to you," what would you interpret the words "set apart to you"?

A. En-dow-e-wan—"I lend it to you."

Q. 81. If I say to you in English, "I grant this table to you for your use" and you interpret that into Chippewa, what words would you use?

A. I would say the same word, "en-dow-e-wan"—"I lend it to you." There is no other word for "I set it apart."

Q. 82. There is no other idiom or expression in the Indian to interpret that?

A. No; nothing but "I lend it to you." Of course, "I set apart"—"ke-me-nen," "I give;" that don't mean "I lend it to you" or "let you have it."

Q. 83. I understand you to say, then, that the Chippewa word which corresponds in their various meanings to the English words of "gift" or "grant" is—

A. When they give, sir, they say "me-ge-wan"—that is, "I give;" "en-dow-e-wan" when "I lend."

Q. 84. That is not exactly what I want. I mean, as we say here, "We will set apart to you a home," or "We will set apart to you," for instance, so much land or "I will set apart to you so many ponies—I will set them apart to you," as, for instance, as if an Indian were dividing among his children his property he would set apart to this so many and so many to the other. Now what would be the Indian word for that—to interpret the words "set apart" in that way?

A. "Me-e-win-bah-gun-mah-nind-pah-yun-o-dah-e-un."

Q. 85. In English, supposing the chief would say, as I said before, having certain property that he might be dividing up, "I give or grant you," for instance, "so many ponies or such property or such a piece of land" to those children or to the other person, "I give or grant to you such and such," and "I give or grant to you"—would he use the same form of expression or not that you have interpreted there in regard to setting apart?

A. An Indian when he knows he is going to die, if he has got anything to leave to his children, has got another way.

Q. 86. I am not talking about his dying, but in his lifetime.

A. Oh, yes, that is about the way they generally use it.

Q. 87. It would be about the same form of expression?

A. Yes, sir.

Q. 88. At the time that this conversation occurred between the commissioner and Mon-si-moh was there anything said

about what particular right in this property—what particular kind of a right—Mon-si-moh was to get?

Mr. DAVIS: The same objection.

A. There was no stipulation made at all. He said he wanted that section of land instead of the money, and he wanted that piece of land for his own use and he didn't want nobody to bother him, and after he was dead he would leave it to his heirs. That was the very words he said, and the commissioner told him he was right and a sensible man.

Q. 89. Did the commissioner say then that he could have it?

A. Yes, sir; he says, "You shall have it. You are a sensible man." He says, "You shall have it and you won't be bothered."

Cross-examination.

By Mr. DAVIS:

X Q. 1. Mr. Morrison, where was the elder chief Mon-si-moh buried?

A. I think he is buried up here on the point somewhere. I don't really know where he is buried.

X Q. 2. Was he buried on the land where he camped and made his home and had his garden?

A. I can't say. I wasn't there when they buried him.

X Q. 3. You don't know that he was?

A. No, sir.

X Q. 4. Isn't there a tradition in your tribe as to where the chiefs are buried or, at least, some regulation?

A. Well, the Indians still, you know, they bury their dead wherever they die. They are strung right along on the river.

X Q. 5. But a chief like that?

A. They have no burying grounds.

X Q. 6. You would not be able to say that Mon-si-moh's body rested upon these premises in any place?

A. I can't, although I think it is buried somewheres here.

X Q. 7. You don't know about that?

A. I wouldn't be positive. I wouldn't know where he is buried. I have never inquired into that.

X Q. 8. You have no accurate information by which you can locate his grave?

A. No, sir.

X Q. 9. This land where he camped and where his band or a portion, at least, of them were was on what section? Do you know?

A. That I couldn't tell you. I did know. They marked a piece of land in the Indian Office while we was there. There was a whole delegation right there. Here is these men, right here, seen it when they marked it out, but I couldn't tell you what section it was.

X Q. 10. Wasn't this place up here by the mouth of the river, where Mon-si-moh placed his home, as you call it—wasn't that on section 27?

A. I couldn't tell you, sir. I am not posted on the sections.

61 X Q. 11. As a matter of fact, was it not on a different section from the one in which this strip of land along the river that is in controversy here is?

A. No; I guess he marked out his land just about the way it is laid out.

X Q. 12. Do you know about these things? Do you know whether it was on a different section or not?

A. I just told you a little while ago that I didn't know the sections or the number or anything of that kind. I know just where they marked that place at the time he was at Washington—I see the mouth of the Thief river and the Red Lake river—and he marked it right there where he wanted, and he wanted to have it reserved. I didn't know what section it was, and didn't inquire; only I know that is the section he asked for. Here are these four of us that witnessed that.

X Q. 13. As matter of fact, you don't know, then, whether the place where Mon-si-moh placed his home, as you call it, is on the same section in which the ten-foot strip of land is or not, do you?

A. Yes; I think that is the same.

X Q. 14. You think so. Do you know anything about it?

A. I know by the mark of the map where they drew it—it is.

X Q. 15. You know it is?

A. Yes, sir.

X Q. 16. And you will swear to it?

A. No; I couldn't tell you the section nor the number.

X Q. 17. Will you swear that the place where the old chief Mon-si-moh placed his camp is on the same section as this ten-foot strip that we are lawing about?

A. I will swear where I came and found him, where he had picked out his land, is right here.

X Q. 18. Was it on the same section?

A. Yes, sir; it is just where he lived.

X Q. 19. I mean the ten-foot strip fenced in by the barbed-wire fence.

A. I don't understand the sections and don't know where it was, but I know just where his village was.

X Q. 20. And where his fish traps were?

A. Yes, sir.

X Q. 21. I will ask you again, Mr. Morrison—I don't want to confuse you—

A. You can't confuse me a bit, sir.

X Q. 22. I understand about that. What I want to know is whether the place where the old chief Mon-si-moh had his village, on the west side of the river—whether that is on the same section of land on which this ten-foot strip is?

A. That is just where he had it; right there. I can go and show you the old graves yet.

X Q. 23. I don't want to see any graves; I want you to answer the question.

A. That is all right.

X Q. 24. You say that some of the chiefs at Washington, at the time of this supplementary treaty, received \$5,000 in money?

A. Yes, sir.

62 X Q. 25. Was that for their tribe or for themselves?

A. For themselves—for their good behavior; a kind of fee.

X Q. 26. Well, Mon-si-moh's land was in the same shape, was it not—a sort of fee to him instead of money?

A. He had a right to take money or land.

X Q. 27. For himself? It was not to be divided among the tribe?

A. No, sir,

X Q. 28. It was what we call a bribe, in other words, in cold English.

A. Not a bit of it. We didn't call it a bribe.

X Q. 29. What do you call it?

A. He asked for that piece of land and another chief did the same thing. It wasn't a bribe at all; asked for that piece of land for his own use. Well, how do you call that a bribe?

X Q. 30. You just answer the question; we won't discuss it. You say it is not a bribe?

A. It isn't a bribe. They paid this old chief \$5,000 and others got so many; I don't know how much, but Moose Dung himself said he wouldn't take no money.

X Q. 31. He wanted land?

A. Yes; he wanted land; he wanted a section of land.

X Q. 32. That was not to be divided among the tribe, but these Indians who got that money, \$5,000, or got the land got it for themselves, didn't they?

A. Got the money for themselves.

X Q. 33. And not to be divided among the members of the tribe?

A. No, sir.

X Q. 34. Whatever consideration the Government had paid for making that treaty went to the members of the tribe, didn't it?

A. How is that?

X Q. 35. I say whatever the Government paid to the Indians for ceding these lands went to the tribe generally or for the benefit of the tribe?

A. No, sir; they made a stipulation to pay installments every year.

X Q. 36. But it was for the benefit of all the tribe?

A. This chief got his money there for his own use.

X Q. 37. You don't understand me. I say the general price that was paid for ceding that land was for all the tribes?

A. Yes; that was the agreement.

X Q. 38. Outside of that agreement some of the chiefs got some money and Mon-si-moh got some land?

A. Yes, sir; asked for it and got it.

X Q. 39. Well, that is what you said.

A. He took it in preference to money.

X Q. 40. How many members were there in the old chief's band, do you know? How many composed his band?

A. No; I couldn't tell you, sir.

X Q. 41. Have you any idea? Was it a hundred, fifty, or twenty-five?

A. No; I couldn't tell you.

63 X Q. 42. Couldn't tell how many lodges or teepees did they have?

A. Never counted them.

X Q. 43. Ever know about that?

A. No,

X Q. 44. Whether it was one or a hundred?

A. No.

X Q. 45. And this band of Indians that he controlled went about on the reservation like other Indians who wanted to, did they?

A. They had their Indian reservation to roam and hunt for their living.

X Q. 46. They were tribal Indians?

A. Yes.

X Q. 47. So was Mon-si-moh?

A. No.

X Q. 48. The old chief was not?

A. No; the old man stayed here all the time.

X Q. 49. And his tribe went off on the reservation?

A. Yes, sir; and he stayed here and had a good garden.

X Q. 50. He didn't hunt or fish?

A. Oh, he hunted a good deal, but after the treaty he didn't hunt much; he stayed here and made his garden. Before that he was one of the best hunters in the whole Indian reservation, but after the treaty he stayed right here and made his garden and made this his home.

X Q. 51. That was because he was getting old and couldn't hunt?

A. Oh, of course.

X Q. 52. He still kept up his government of his band until he died—that is, he was chief of the band?

A. I think so. I was never here with them. I only visit them two or three times. I couldn't tell you how he was doing his business.

X Q. 53. I didn't ask you how. I say so far as you understood it he was still the chief of the band until the time of his death?

A. Yes, sir.

X Q. 54. You told us when the chief dies the oldest son takes it and the medal and all that sort of thing?

A. Yes.

X Q. 55. And that don't happen until the old chief dies, does it, usually?

A. No.

X Q. 56. So until the time of his death, as you understand it, he was the chief of this band of roving, hunting Indians?

A. Yes, sir.

MAY-DWA-GUN-ON-IND, a witness produced on behalf of the complainants, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Rinehart:

The witness, being unable to speak the English language, testified through an interpreter.

Roderick McKenzie sworn as an interpreter.

Q. 1. How old are you?

A. I wouldn't know.

64 Q. 2. Who are you? What is your station among the Chippewa Indians, and position?

A. My father was a chief. He was considered as chief on both sides, on the English side and also on the American side as a chief, and I am his successor.

Q. 3. Where do you live?

A. At Red Lake.

Q. 4. Were you present at the making of the treaty at the Old Crossing of the Red Lake river between the United States on one side and the Red Lake and Pembina bands of Chippewa Indians on the other on the 2nd of October, 1863?

A. I was present.

Q. 5. Were you present in the city of Washington, the capital of the United States, in the winter following that treaty, when that treaty was ratified between the Commissioner of Indian Affairs and the chiefs of the Red Lake and Pembina bands of Chippewa Indians that were present there at that time?

A. Yes, sir; I was present there, too.

Q. 6. Did you hear the speeches that were made at the first treaty at the Old Crossing of Red Lake river by the different chiefs and by the commissioners, Mr. Ramsey and Mr. Morrill, for the United States?

A. At the first meeting I was there, and when I thought everything was not just as I wanted it I went home and stayed at home.

Q. 7. Did you hear anything at that time about the Chief Mon-si-moh's having some land at the mouth of Thieving river?

The respondent objects to any conversation as incompetent, irrelevant, and immaterial.

A. He says, I knew; I used my ears and heard.

Q. 8. Did you hear Mon-si-moh ask the commissioners for the land at the mouth of Thieving river at that time?

Respondent objects to this question for the same reason as above stated.

A. Mon-si-moh stood about that far from me (indicating), and on the left side the Commissioner stood when Mon-si-moh asked for a piece of land on the west side of Thieving river. I want that piece of land for myself and also for my children. The Commissioner then said he could have it. You shall get it, and I believe he took a piece of paper and wrote it down.

Q. 9. Did you hear any conversation between the chiefs and the

Commissioner of Indian Affairs in Washington about what was to be given by the Government to the chiefs at that time?

The respondent objects to this question for the reason stated in the previous objection.

A. Yes, sir; I heard him promising that he was going to give it.

Q. 10. Did you hear Mon-si-moh at that time ask for this piece of land at the west side of Thieving river—at the mouth of Thieving river?

A. Yes, sir.

65 Q. 11. What did Mon-I-moh say?

The respondent objects to this question for the reason stated in the previous objection.

A. The Commissioner was sitting near by me when Mon-si-moh came and asked him for that piece of land for himself and also for his children, and the Commissioner told him that he would get it, and those two old men over there heard him say, and also Mr. Morrison.

Q. 12. How many years had you known Mon-si-moh before that?

A. He says I remember him from the time I was a little boy up to the time of this treaty. His father was hired by my chief's father. I was a little boy about that time and so was Mon-si-moh.

Q. 13. Where did Mon-si-moh live?

A. At Red lake, at a place called Little Rock.

Q. 14. Did you ever know Mon-si-moh when he lived near the mouth of Thieving river?

A. Yes, sir; he lived at the crossing here.

Q. 15. Do you know where Mon-si-moh's home was at that time, at the time of the making of the treaty in 1863?

A. He was at the Red lake. He was living at Red lake.

Q. 16. Mon-si-moh?

A. Yes, sir.

Q. 17. Do you know where Mon-si-moh's home was at that time, at the time of the making of the treaty in 1863?

A. They were all living there, his band and himself, at Red lake about that time.

Q. 18. Do you know where Mon-si-moh lived after the time that the treaty was made at the Old Crossing of the Red Lake river?

A. He went home from Red Lake crossing to Red lake, and shortly afterwards moved down here.

Q. 19. To Thief river?

A. Yes, sir.

It was admitted by the solicitors for the respective parties that the old Chief Mon-si-moh and Moose Dung are one and the same person.

No cross-examination.

LEADING FEATHER, a witness produced in behalf of the complainants, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, testified as follows in answer to interrogatories propounded to him by Mr. Rinehart:

The witness, being unable to speak the English language, testified through an interpreter.

Roderick McKenzie sworn as an interpreter.

Q. 1. What is your name?

A. Mah-gah-de-gwon-wad.

Q. 2. What is it in English?

A. Leading Feather.

Q. 3. Who are you?

A. One of the chiefs of Red lake.

Q. 4. Were you present at the Old Crossing of the Red Lake river in 1863, when the treaty was concluded between the United States and the Red Lake and Pembina bands of Chippewa Indians?

66 A. Yes, sir.

Q. 5. Were you a chief of the Red Lake Indians at that time?

A. I don't know whether I was a chief at that time.

Q. 6. Did you sign the treaty?

A. Yes, sir.

Q. 7. Did you hear the speeches, the talks that were made between the Indian chiefs and the United States commissioners?

A. I heard them.

Q. 8. Did you hear Mon-si-moh make a speech there during those proceedings?

A. Yes, sir; I heard him.

Q. 9. Did he say anything about the land on the west side of the mouth of Thieving river, about wanting the land on the west side of Thieving river?

A. No, sir; he didn't say anything about it at that time.

Q. 10. Were you present in the city of Washington when this treaty was ratified between the chiefs of the Red Lake and Pembina bands of Chippewa Indians present there and the Commissioner of Indian Affairs, in the city of Washington?

A. I was there, sir.

Q. 11. Did you hear anything said there by the Chief Mon-si-moh about the land on the west side of the mouth of Thieving river?

A. Yes, sir; I was standing about that far from him (indicating) when he asked for it.

Q. 12. What did Mon-si-moh say?

The defendant objects to this question for the reasons stated in the objection in the deposition of May-dwa-gun-on-ind.

A. I was standing about that far from him (indicating), he says. I was about ready to give a speech when he stopped me and says, "I want to have something to say first."

Q. 13. Then what did he say?

Mr. DAVIS: The same objection.

A. He asked for a piece of land on the west side of Thieving river. I want that piece of land for myself, and when I die that my children shall live on it as long as they live.

Q. 14. What did the Commissioner say?

A. They had quite a long conversation, but afterwards the Commissioner told him and says, "You shall have that land."

Q. 15. Did you know the old Chief Mon-si-moh before he died?

A. I was well acquainted with him.

Q. 16. Do you know whether he lived on the land and on the west side of the mouth of Thieving river before he died?

A. Yes, sir; he says he used to live on that land.

Q. 17. Do you know the young chief, the present Chief Mon-si-moh, Moose Dung, formerly called Mah-gah-gen-ewei?

A. Yes, sir; I have known of his family and I know him; I am well acquainted with him.

Q. 18. Do you know whether or not the young chief, the present chief, has lived upon the same land since the death of his father, at the mouth of Thieving river?

67 A. Yes, sir; he says he lives on those lands very often.

Q. 19. Did you sign the treaty, the ratification or supplemental treaty in Washington?

A. Yes, sir; I signed it.

Cross-examination.

By Mr. DAVIS:

X Q. 1. How old was the old Chief Mon-si-moh at the time he was there at the meeting where the treaty was made?

A. I don't know for certain how old he was; neither could I guess on it, he says.

X Q. 2. Was he quite an old man? Ask him.

A. He wasn't very old.

X Q. 3. How long after the treaty was made did the elder Chief Mon-si-moh die?

A. I do not know.

X Q. 4. He couldn't tell how many years it was?

A. No.

Mr. RINEHART: He might tell how many winters or summers.

X Q. 5. Well, put it that way, winters or summers or suns.

A. He says about nine years after the treaty was made he died.

X Q. 6. At the time of his death he was still the chief of his band, was he, and in control over them?

A. Yes, sir.

X Q. 7. And was what we call a tribal Indian—that is, he was associated with his band and living with them?

A. Yes, sir.

PIERRE BOTTINEAU, a witness produced on behalf of the complainants, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows in answer to interrogatories propounded to him by Mr. Rinehart:

Q. 1. Where do you live?

A. I live at Red Lake Falls, sir.

Q. 2. What languages do you speak?

A. Well, I talk my language, the French, the first thing, and then the Chippewa; those are the two languages natural to me, because my mother is a Chippewa woman and my father is a French.

Q. 3. And you speak the English language, of course?

A. Well, yes, a little bit; not much. I understand it well, though. Sometimes I don't pronounce the word right.

Q. 4. Where were you living in 1863? That was about a year or two after the Sioux outbreak?

A. Oh, yes. I lived at Osceola, ten miles west from Minneapolis.

Q. 5. Were you present at the making of the treaty between the United States and the Red Lake and Pembina bands of Chippewa Indians at the Old Crossing of the Red Lake river in October, 1863?

A. Yes, sir. Alexander Ramsey made the treaty. I had been a guide for him, and come up to that place as guide and interpreter; not the first one, because Paul Beaulieu was the first, but generally there was commissioners when you made a treaty. You know that better. You want some interpreter beside to hear the treaty.

68 Q. 6. Now, did you hear the speeches and the talks that were made by the chiefs and head men of the Red Lake and Pembina bands of Chippewa Indians and by the commissioners, Mr. Ramsey and Mr. Morrill, at that time?

A. Yes, sir.

Q. 7. In the negotiations which led up to the making of the treaty?

A. Yes, sir.

Q. 8. Did you know a chief called Mon-si-moh of the Red Lake Indians?

A. Yes, sir.

Q. 9. Did you hear him make any speech or talk there at that time?

A. Yes, sir.

Q. 10. Did you hear him say anything about a piece of land on the west side of the mouth of Thieving river?

The defendant objects to this question for the reason already stated in the other depositions.

A. Yes, sir.

Q. 11. You may state what Mon-si-moh said in any speech in which he spoke of that land.

Mr. DAVIS: The same objection.

A. Yes, sir; I heard that, sir. I will give you some information. Mon-si-moh was the head man; he was brother-in-law of this head chief May-dwa-gun-on-ind, and Mon-si-moh took the position of head

chief in the negotiations. When he asked about such a piece of land he says, "I don't know myself what section line it is; I never been below where I live, but we want a piece of land," he says, "on this Thief River branch and then the Red Lake river and the west side of the river." The Indians say where the sun sets. Said he wants a piece of land. I have stood on it myself on the Red Lake river. Now it is a fraction. I want a piece of land, to give him enough what you call a mile, from the west side of Thief river, and he thought I will live on that piece. Most every two or three years I am coming up here.

Q. 12. You came up every two or three years after that and saw him living on that piece of land?

A. Yes, sir.

Q. 13. What did the commissioners say when Mon-si-moh spoke about that piece of land?

Mr. DAVIS: The same objection.

A. When he asked that the first thing I know he says, "You are going to have that."

Q. 14. How long have you known Mon-si-moh since the treaty was made?

A. Since I was quite a boy. He used to come up to Winnipeg at the time I lived down there at Winnipeg, and that time he had a stove-pipe, and for an Indian that was curious at that time, that stove-pipe cap, and I knew him since that time. I met him several times, and I have been traveling many times here.

Q. 15. Were you ever at the mouth of Thieving river before this treaty was made?

A. Yes, sir. I was pretty nearly killed running the horses
69 off Thief river when I was a boy 13 years of age at that time.

Q. 16. Did you ever see Mon-si-moh about the mouth of the Thief river before the treaty was made?

Objected to by defendant as incompetent, irrelevant, and immaterial.

A. Yes, sir.

Q. 17. Do you know whether or not he lived there before the treaty was made?

A. Oh, he lived there, because he take the family; what you call a home. The Chippewa home; we used to take it from the lake and the river and come up near the British line. That is what you call it. Those are Chippewa homes.

Q. 18. But did you ever see Mon-si-moh and his band camped at the mouth of Thieving river before the treaty was made?

A. Yes, sir; many times.

Q. 19. Did you ever see Mon-si-moh's tepees on the west side of the Thieving river before the treaty was made?

A. Yes, sir.

Q. 20. Did you ever see Mon-si-moh camped or living upon the land which is now claimed by his son Moose Dung?

A. Yes, sir.

Q. 21. Do you know where that land is at the present time?

A. Yes, sir.

Q. 22. Did you ever see him there after the treaty was made?

A. Yes, sir.

Q. 23. When?

A. Well, that must be about—it is so much time I cannot say. I traveled most every year back and forth.

Q. 24. Do you know whether or not he made that specially his home?

A. Yes, sir. Now, gentlemen, I will tell you a little story about his red coat.

Q. 25. We don't care about that. Did Mon-si-moh say anything about how long he wanted this land; whether he wanted it for himself or for himself and his children, or anything of that sort?

A. No, sir; I never hear anything.

Q. 26. You heard him say that he wanted the land?

A. He wanted the land; yes.

Q. 27. Were you in Washington when the supplemental treaty was made?

A. Yes, sir.

Q. 28. Did you hear the talk that was had with the Commissioner of Indian Affairs about this at that time?

A. Yes, sir.

Q. 29. Did you hear Mon-si-moh then say anything about this land that we are talking about?

A. No, sir; because it has been give to him at Red Lake; he knows that, and he not brought it up at all that I know of at that time.

Cross-examination.

By Mr. DAVIS:

X Q. 1. That is the council at Washington?

70 A. Yes.

X Q. 2. Do you know where Mon-si-moh died, the old chief?

A. No, sir.

X Q. 3. Do you know where he was buried, Mr. Bottineau?

A. No, sir.

X Q. 4. Do you know how long after the treaty of 1863 he did die?

A. Well, no, sir; I cannot say about that.

CLEMENT A. H. BEAULIEU, a witness produced on behalf of the complainants, after being duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows in answer to interrogatories propounded to him by Mr. Rinehart:

Q. 1. What is your age?

A. Fifty-three.

Q. 2. Where do you live?

A. In Red Lake.

Q. 3. Agency?

A. Yes, sir.

Q. 4. What nationality are you?

A. I am mixed blood.

Q. 5. Between French and Chippewa?

A. Yes, sir; between French and Chippewa. My old grandfather was an American; my father a Frenchman; my mother, of course you know, was an American.

Q. 6. What languages do you speak?

A. Well, I speak two languages perfect, but I understand French, too.

Q. 7. Do you speak the English and Chippewa perfectly and understand the French?

A. Yes, sir.

Q. 8. Were you present at the negotiations which were had at the Old Crossing of the Red Lake river between the United States commissioners on the part of the United States and the head men of these bands of Chippewa Indians which resulted in the treaty concluded on the second of October, 1863?

A. I was not there.

Q. 9. Were you present in the city of Washington when the supplemental treaty, which ratified this treaty, was made between the chiefs and head men there present and the Commissioner of Indian Affairs?

A. I was.

Q. 10. Did you hear the speeches and talks which were made by the various chiefs and by the Commissioner of Indian Affairs at that time?

A. I did.

Q. 11. Did you know the elder Chief Mon-si-moh in his lifetime?

A. I did.

Q. 12. Was he present there in Washington?

A. Yes; he was there.

Q. 13. Did you hear him make any speech?

A. Yes, sir.

Q. 14. You may state, if you remember, what he said at that time.

71 Mr. DAVIS: The same objection.

A. Of course you know I was pretty young then, but still at the same time I recollect very well what he did say. He said by this piece of land. Of course I didn't know where it laid, but of course he meant in Thief river, and he said that he wanted a tract of land there for himself and his children, and nobody else.

Q. 15. What did the Commissioner say in response to that, if anything?

A. Well, I was sitting right by my old father at the time, and the old chief here that just stepped out of there was just signing when old Mon-si-moh stepped up and raised up. When he asked for that tract of land the Commissioner said, "You shall have it."

Q. 16. You understood the Chippewa speech of Mon-si-moh, did you?

A. Yes, sir.

Q. 17. And the English response of the Commissioner?

A. Yes, sir.

Q. 18. And the speech and answer, were they interpreted there at that time between the two?

A. Yes, sir.

Q. 19. Did you understand the interpretation?

A. Yes, sir.

Q. 20. Was it truthfully made, the interpretation?

A. Yes, sir.

Q. 21. Who was it made by?

A. My father, Paul H. Beaulieu.

Q. 22. Did the Commissioner say anything about what kind of interest Mon-si-moh will get in this land?

A. No, sir; I didn't hear him say.

Q. 23. He simply said that he shall have the land?

A. He should have it, that is all.

Q. 24. How long had you known the old Chief Mon-si-moh before these treaties were made?

A. About one year.

Q. 25. Where did you first see him?

A. In Red Lake.

Q. 26. Had you ever met him at the mouth of Thieving river before that time?

A. This is my first trip here.

Q. 27. Had you ever seen the old Chief Mon-si-moh about the mouth of Thieving river before the treaty was made?

A. No, sir.

Q. 28. Had you ever seen him about the mouth of Thieving river after the treaty was made?

A. No, sir.

Q. 29. Never saw the old chief here at Thieving river?

A. I never did. This is my first trip here.

No cross-examination.

72 RODERICK McKENZIE, a witness produced on behalf of the complainants, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows in answer to interrogatories propounded to him by Mr. Rhinehart:

Q. 1. Do you know the present Chief Moose Dung?

A. Yes, sir.

Q. 2. Where do you live?

A. At Red Lake.

Q. 3. How long have you known the present Chief Moose Dung?

A. About nineteen years.

Q. 4. Do you know where he has lived during that time?

A. Yes, sir.

Q. 5. How often have you seen him during that nineteen years?

A. I have seen him at least once every year.

Q. 6. Where has he lived during that time?

A. He lived a little on this side of the crossing, where the ferry-boat is; he had a house there ever since I knew him.

Q. 7. How is that with regards to the mouth of Thieving river?

A. Just about opposite.

Q. 8. Did he have a tepee or cabin or anything there that he lived in?

A. He had a log building that he lived in in the winter time and he generally had a tepee in the summer.

Q. 9. At that place?

A. Yes.

Q. 10. Did he cultivate any ground there for any garden?

A. Not at that time. He might have had a little piece.

Q. 11. And were you ever there while he lived there?

A. Yes, sir; I used to be there.

Q. 12. How many times were you there during that time?

A. I might have been there a half dozen times. I couldn't say for certain. I have been there four or five times at least.

Q. 13. And each of those times you found Moose Dung living there at that place?

A. Yes, sir.

Cross-examination.

By Mr. DAVIS:

X Q. 1. These five or six times that you speak — represent all of your visits during the years that you knew him, do they? That is, in the fifteen or sixteen years you saw him there five or six times?

A. Yes, sir.

X Q. 2. And those visits would be at intervals of about a year or more apart?

A. Yes, sir.

X Q. 3. How long did you stay there when you came to see him?

A. I didn't come there to see him, but I made the trip back and forward.

X Q. 4. Just passed his place?

A. And I knew he was there.

X Q. 5. You just passed by his place?

A. Yes.

72 X Q. 6. Do you recollect how long ago it was when you first saw him there?

A. I couldn't say for certain.

X Q. 7. Do you know when you last saw him there?

A. Summer before last.

X Q. 8. Do you know when he built his shanty?

A. I couldn't tell, sir.

X Q. 9. Do you know how much of his time he spent there in the shanty?

A. I couldn't say for certain, but I know one thing, that he was either there or somewheres down here because he never lived up at the lake during the time I have been there, and I have been at

the agency there all the time. I work in the store, and I was a Government interpreter for four years.

X Q. 10. You simply know that he was not up at the Red Lake agency?

A. Yes, sir.

X Q. 11. But you don't know where else he might have been, do you?

A. Well, I thought he was down here.

X Q. 12. Never mind about your thinks; I ask what you know about it. You don't know where he was, of course, do you?

A. No, sir; I couldn't swear where he was.

Mr. RHINEHART: When was the first time you saw him living in the shanty?

A. About seven or eight years ago.

MICHAEL BURNS, a witness produced on behalf of the complainants, after being duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows in answer to interrogatories propounded to him by Mr. Rhinehart:

Q. 1. Do you know one Moose Dung?

A. Yes, sir.

Q. 2. How long have you known him?

A. Since 1880.

Q. 3. Where do you live?

A. I live half a mile from this town for about seven years right straight along up to about eight years ago.

Q. 4. You live now at Thief River Falls?

A. Yes.

Q. 5. Do you know the land that is in controversy here, a section of land and some lots claimed by Moose Dung, lying on the west side of Thieving river?

A. Yes, sir.

Q. 6. Have you ever seen Moose Dung on that land?

A. Yes, sir; lots of times.

Q. 7. Do you know whether or not he had any house or building on there?

A. Yes, sir.

Q. 8. What did he have, if any?

A. He had a log shanty.

Q. 9. Where was that located?

74 A. Right close to the mouth of Thief river and Red lake.

Q. 10. Close to the mouth of the junction of Red lake and Thief river.

A. Yes, sir.

Q. 11. On the west side?

A. On the west side of Thief river.

Q. 12. When was the first time that you ever saw that log shanty?

A. I saw that in 1880.

Q. 13. Do you know was Moose Dung living in that shanty at that time?

A. Yes, sir; he was living there at that time when I first knew him. I met him here. There was a man named John Labrie lived here or a man named Russell, and the first time I ever remember seeing him was at Russell's place down here in this little cave on the bank of the river. Of course, I have been up around here; there wasn't any settlers here at the time, and I went up there and saw him, and have been into the shanty.

Q. 14. Was he about the shanty there?

A. Yes, sir.

Q. 15. Do you know whether or not he ever cultivated any of that land?

A. Yes, sir.

Q. 16. He did, you say?

A. Yes, sir.

Q. 17. When was that?

A. That was 1881 and 1882.

Q. 18. State how much was cultivated.

A. It was about an acre cultivated, and corn and potatoes raised on it, and little garden stuff. He had it fenced in.

Q. 19. About the shanty, was it?

A. It was about thirty rods probably from the shanty.

Q. 20. Have you known of any of it being cultivated since that or used by Moose Dung in any way?

A. No, sir; I don't know but what the garden had been there for four years, probably five years; I couldn't say about that, but I know in particular that it was cultivated for two years.

Q. 21. How do you know that?

A. I saw it.

Q. 22. When is the last time that you saw Moose Dung living in the shanty or on that land?

A. That shanty was burned down about a year ago. I think about a year ago he lived in that shanty up to then, on and off, except when he would be out hunting or something of this kind.

Cross-examination.

By Mr. DAVIS:

X Q. 1. At the time you first saw Moose Dung in his cabin there, was anybody living with him?

A. His wife used to live with him and his son.

X Q. 2. Anybody else there about him?

75 A. There might be sometimes. The Indians generally had visitors a good deal.

X Q. 3. Ever see any Indians standing about him there?

A. Yes, sir.

X Q. 4. Of his band or tribe?

A. Been in and out there a great deal.

X Q. 5. I say belonging to his band, were the Indians who were camped about him, do you know?

A. Indians off the reservation; yes, sir.

X Q. 6. What sort of buildings did they occupy?

A. They had wigwams sometimes, and sometimes they would camp all along the river on the ground there, and clean down here.

X Q. 7. That is, Indians belonging to his band ?

A. Supposed to be.

X Q. 8. At the time he lived there he was acting as chief of this band of Indians, was he ?

A. I suppose he was.

X Q. 9. So you understood him ?

A. Yes, sir ; I understood that was it.

X Q. 10. This little cabin that you speak of was a one-roomed house, was it ?

A. Yes, sir.

X Q. 11. And this garden patch was just above it some few rods where he raised the corn and potatoes used by himself and family ?

A. That was down below on the river ; that was south of his shanty.

X Q. 12. Well, that is what it was cultivated for ?

A. Yes, sir.

X Q. 13. The garden stuff for himself and family to eat ?

A. Yes, sir.

X Q. 14. On how many occasions did you visit him there at the cabin ?

A. I have probably been in his cabin as much as ten or fifteen times.

X Q. 15. Covering how long a period of time, how many years ?

A. I couldn't say about that ; I have been in there different times and different years.

X Q. 16. Well, how many years would this ten or fifteen visits cover ? From 1880 up to 1890 and what ?

A. Probably seven or eight years.

X Q. 17. So that in seven or eight years you were ten or fifteen times in his shanty and saw him there ?

A. Yes, sir.

X Q. 18. The rest of the time you don't know where he did spend it, or where he was ?

A. I have seen him around here at this trading post quite a number of years right along.

X Q. 19. Now living at the trading post ?

A. No, sir.

X Q. 20. But coming in and going out ?

A. Yes, sir.

76 JOHN PETERSON, a witness produced on behalf of the complainants, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows in answer to interrogatories propounded to him by Mr. Rhinehart :

Q. 1. Where do you live ?

A. Thief River Falls.

Q. 2. How long have you lived here ?

A. I have lived here off and on, and out of town about a mile and a half, for the last eleven or twelve years.

Q. 3. You know one Moose Dung, the chief of the Red Lake Indians?

A. Yes, sir.

Q. 4. Do you know a piece of land claimed by him on the west side of the mouth of Thieving river?

A. Yes, sir.

Q. 5. Have you ever seen Moose Dung on that land?

A. Yes, sir.

Q. 6. Do you know whether or not he ever had any buildings or place of shelter or house on there?

A. Yes, sir.

Q. 7. What was it?

A. It was a log shanty.

Q. 8. Where was it located?

A. About on the bank of Thief river.

Q. 9. And how far from the junction of Thief river and Red Lake river?

A. I couldn't just exactly say how far, but a few rods.

Q. 10. Did you ever see Moose Dung in that shanty?

A. Yes.

Q. 11. Know whether or not he had any land under cultivation?

A. Yes, he had a small patch up there.

Q. 12. Near the shanty?

A. Yes, about eight or ten rods from the shanty.

Q. 13. When did you first see him in the shanty?

A. It must be about ten or eleven years ago.

Q. 14. Was he living in the shanty at that time?

A. Yes, sir.

Q. 15. Did he have his traps, and household effects that he had—what did he have in the shanty?

A. Well, he had his household goods there, stove and such as that.

Q. 16. Bed?

A. Yes. Had camping outfit. He would go out hunting once in a while, and have his truck in there. He had a stable there, a kind of a dug-out in the bank of the river.

Q. 17. What did he keep in there, a horse or pony?

A. Yes.

Q. 18. How many times have you seen him at that shanty?

A. I couldn't say; lots and lots of times I have seen him there.

Q. 19. Extending through how many years?

A. Well, it would be, probably, for about eight or nine years, I guess. He burned down somewheres about a year ago, I guess, or a little over.

77 Q. 20. Did you ever have any dealings with Moose Dung about that section of land?

A. Yes, sir.

Q. 21. What was that?

Objected to by defendant as incompetent, irrelevant, and immaterial.

A. I leased it a year ago for herding.

Q. 22. From Moose Dung?

A. From Moose Dung; yes, sir.

Q. 23. And did you occupy it during that year under Moose Dung for herding?

A. Yes, sir.

Mr. DAVIS: I move to strike that out.

Cross-examination.

By Mr. DAVIS:

X Q. 1. Where has the chief been living during the last year?

A. Well, he has been living, off and on, here and up at the lake; part of the time here and part of the time up at the lake, I think. I haven't seen him up to the lake, because I haven't been up there more than two or three different times.

X Q. 2. He never rebuilt his shanty after it burned down?

A. No, sir.

X Q. 3. That was the only patch of ground on the section that was cultivated, this little garden patch you speak of—I mean by Moose Dung?

A. Yes; I think that was all; just that.

X Q. 4. Any fence around it when you saw it?

A. Yes, sir.

X Q. 5. What sort of a fence?

A. Oh, it was just a pole-rail fence.

Redirect examination.

By Mr. RHINEHART:

Q. 24. During this time that you knew him that was Moose Dung's home, was it, on that land?

Objected to by defendant as calling for a conclusion.

A. Yes, sir; I suppose it was.

Recross-examination.

By Mr. DAVIS:

X Q. 6. Ever see any Indians there with him?

A. Yes, sir.

X Q. 7. Members of his band?

A. I suppose they were, yes; his son lived there with him.

X Q. 8. Occupying tepees about there?

A. Yes, sir.

X Q. 9. Wigwams scattered around?

A. Yes, sir.

Redirect examination.

By Mr. RHINEHART:

Q. 25. Where were the wigwams and tepees?

A. Oh, they were strung along the bank of Thief river there north of his shanty.

78 Q. 26. Didn't a large number of his band have their camping place across the Thief river on the reservation at that time?

A. Yes, sir; there was quite a number of them camping at the forks across Thief river and on the point.

WILLIAM G. PORTER, a witness produced on behalf of the complainants, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth relative to this cause, testified as follows in answer to interrogatories propounded to him by Mr. Rhinehart:

Q. 1. How long have you lived in Thief River?

A. Since 1893.

Q. 2. Do you know Moose Dung?

A. Yes.

Q. 3. What business have you been in there?

A. I have a kind of a business—it ain't much of a business either. I own a piece of land here.

Q. 4. In the town site?

A. Inside of the town, yes; part of the town site.

Q. 5. You know the piece of land on the west side of Thief river claimed by Moose Dung?

A. Yes, sir.

Q. 6. Have you ever seen Moose Dung on the land?

A. Yes, sir.

Q. 7. When did you first see him there?

A. Oh, I couldn't exactly say. I believe he was there when I came here.

Q. 8. You saw him living in there when you first saw him?

A. I couldn't say that either. I know he had a house there for years, and I couldn't say. I haven't been much of a chum with the Indians.

Q. 9. Have you ever seen him about his house?

A. Yes, sir.

Q. 10. He was living there, was he, at that time?

A. Yes, sir; he was living there. I was there and buried a squaw that was killed by lightning once. He was living there then.

Q. 11. During how many years have you noticed him living there on that piece?

A. Oh, he has lived there until he lost his wife; ever since I have been here, and must be a couple of years ago since he lost his squaw.

Q. 12. And since that he has not stopped there permanently?

A. No; he has been all around since then.

Cross-examination.

By Mr. DAVIS:

X Q. 1. The only social occasion when you visited was when they had a dead Indian there?

A. Yes; I went and helped bury this squaw.

THOMAS WILIE, a witness produced on behalf of the complainants, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth relative to this cause, testified as follows in answer to interrogatories propounded to him by Mr. Rhinehart.

Q. 1. Where do you reside?

79 A. Red Lake.

Q. 2. How long have you resided there?

A. About six years—going on six years.

Q. 3. Do you know the piece of land, the fractional lots and section, on the west side of Thieving river that is claimed by Moose Dung?

A. Yes, sir; I know just about where it lies.

Q. 4. Do you know where the ten-foot strip claimed by Meehan brothers under their lease, commencing at the lower end of lot 1, and the fraction extending up the river—do you know where that strip is?

A. Yes, sir.

Q. 5. Do you know one Ray W. Jones, a resident of Minneapolis?

A. Yes, sir.

Q. 6. When did you first meet Mr. Jones?

A. I met him here last year ago—June, I think.

Q. 7. A year ago coming June?

A. Yes.

Q. 8. Whereabouts did you meet him?

A. Met him at the Hotel Oghamal.

Q. 9. Did you have any conversation with him there at that time?

A. Yes, sir; some.

Q. 10. What did that conversation relate to?

A. It related to this mill site in question.

Q. 11. What did Mr. Jones tell you?

Objected to by defendant as incompetent, irrelevant, and immaterial.

A. We took a walk from the hotel down here to the mill site.

Q. 12. What do you mean by this mill site?

A. In the fraction along the section, and spoke about the best place for a mill; spoke about several things up river and timber, and one thing and another.

Q. 13. Do you know where this fractional lot one is claimed by Mr. Jones at the present time under a lease from Moose Dung?

A. Yes, sir.

Q. 14. Was it upon that piece that this conversation occurred?

A. Yes, sir; it was right on that piece; either that or adjoining.

Q. 15. Now, you may go ahead and state in your own way what Mr. Jones said and what you said relative to that land or who that land was possessed or owned by.

Mr. DAVIS: The same objection and motion to strike out in each instance.

A. We spoke about this tract that he was after. He claimed he would get it in forty or sixty days; I forget which. He would have it and would be building a mill on it.

Q. 16. That was this fraction of lot one?

A. Yes, sir; and I told him that I was under the idea that Meehans had a lease of it at the time, and I don't remember his making any response.

Q. 17. Did you tell him what you thought Meehans had a lease of particularly?

A. What we call the water right.

80 Q. 18. You told him there that you thought Meehans had a lease of the water right?

A. Yes, sir.

Q. 19. Did he make any response to that?

A. Not that I can remember. If he did, I don't remember what his remark was.

Q. 20. Was there anything said about the piers or booms in the river?

A. No, sir; not to my knowledge now.

Q. 21. Were they there at that time?

A. Yes.

Q. 22. And logs lying in the river?

A. I forget whether there was any logs there or not, but the piling was in.

Q. 23. You were in sight of Meehans' mill there at the time you were talking?

A. Yes, sir; we could see down the river to the mill.

Q. 24. Did you ever have any other conversation with him about these lands?

A. No, sir; not after that.

Q. 25. Did you ever see him after that?

A. I saw him once.

Q. 26. How long after?

A. I forget exactly how long. The first time I see him was on this first trip up here.

Q. 27. Did he say whether or not it was his first trip up here when you was down there with him?

A. Yes, sir. I understood it to be the first trip, because he spoke of another man speaking of me to him in Minneapolis.

Q. 28. Was there any conversation between you and Mr. Jones as to Mr. Jones consulting with the Meehans or seeing the Meehans about any water right?

A. I told him I thought the best way to get in there would be to get in there and consult them about it, because I was under the idea that they had a lease of the privileges of the shore.

Q. 29. This conversation, you say, was in the month of June, 1894?

A. Yes, sir; very near the last of the month.

Q. 30. And before the Fourth of July?

A. Just about a week prior to the Fourth. I think it was a week.

Cross-examination.

By Mr. DAVIS:

X Q. 1. How did you happen to get acquainted with Jones?

A. We were sitting on the stoop and got talking, after he learned my name. He said that Mr. Steed had spoke to him of me in Minneapolis, and we started and went down there.

X Q. 2. Did he invite you to take a walk down to the river?

A. I forget how the invitation come up or what it was. We went down together, anyway.

X Q. 3. You don't recollect whether he asked you to go or whether you asked him to go?

81 A. No, sir; I don't know how it was.

X Q. 4. You know you did walk down on this land with Jones and had a little talk with him?

A. Yes, sir.

X Q. 5. Now, do you recall what you first said on the subject of building a mill? What is the first thing Jones said to you?

A. He said if he could get hold of that tract he would get it within forty days or sixty, and he would be building.

X Q. 6. And then you didn't ask him how he expected to get hold of it?

A. No, sir; I didn't ask him.

X Q. 7. And he didn't tell you how he expected to get hold of it?

A. No, sir; he didn't.

X Q. 8. But you said to him, the very first shot out of the box, that he had better go to see the Meehans?

A. No, sir.

X Q. 9. Didn't you?

A. In the conversation I said that come up.

X Q. 10. What did you say besides that? That is what I want to get at.

A. I forget what other conversation came up, but in speaking I remember of remarking to him that I thought they had a lease of it.

X Q. 11. That is all you can remember that was said upon that subject, is it, in the talk?

A. On that subject; yes.

X Q. 12. He spoke about getting possession and building, or if he could get possession of it within forty or sixty days he would have a mill running, and the only thing you can remember or replying to that was that he had better see the Meehans about it. Is that right?

A. No, sir.

X Q. 13. Well, what else did you say? Tell us all you said and all that Jones said.

A. Mr. Jones was a man that didn't say much in particular about anything.

X Q. 14. I asked you what he did say?

A. I made my answer.

X Q. 15. Can you tell us anything else that Jones said or you said?

A. We spoke of the mill site, and what a nice chance it was.

X Q. 16. Who said that, you or Jones; said it was a nice chance?

A. Mr. Jones said it.

X Q. 17. What did you say in reply to that?

A. I said it was.

X Q. 18. You said you thought it was a nice chance?

A. Yes, sir.

X Q. 19. What did he say?

A. I don't know what all the conversation was about it.

X Q. 20. Can you tell anything else that was said there?

A. I can tell that he made the remark that he would be building there, and it was a nice chance, and he had calculated to build.

We didn't stay there long.

82 X Q. 21. What did you say when he said it was a nice chance and he calculated to build?

A. I told him he would do well if he got in there in forty days or sixty.

X Q. 22. You said, "You will do well if you get in here in forty days?"

A. Yes, sir.

X Q. 23. What else did you say?

A. I don't remember of anything particular.

X Q. 24. You can't remember anything else besides that, except you told him he had better see the Meehans?

A. I remember I said that.

X Q. 25. You are clear about that?

A. Yes, sir.

X Q. 26. The rest of it has rather faded out of your memory, has it not; but you have got it down pat that you told him he had better see the Meehans?

A. I told him I thought he could get in easier that way.

X Q. 27. Were you interested for the Meehans in that deal?

A. No, sir.

X Q. 28. What made you think it would be easier to get in if he would see the Meehans?

A. Because I was under the idea that they had a lease of that ground.

X Q. 29. You didn't tell Jones that?

A. Yes, sir.

X Q. 30. You just said you told me all you said to him, and you didn't say about the lease?

A. We asked about the lease.

X Q. 31. Let's get what you said. What else did you say about the lease?

A. I have got nothing to say about the lease.

X Q. 32. Never mentioned the word lease to Jones, did you?

A. They had a lease.

X Q. 33. Did you tell Jones about it?

A. Yes, sir.

X Q. 34. Tell us what you said to Jones about the lease.

A. I told him that I was under the idea that Meehans had a lease of that side of that stream.

X Q. 35. That is just the way you put it, "I am under the idea that they have got a lease here." Is that the way you told it to him?

A. That was the idea.

X Q. 36. Was that the way you said it?

A. No, sir; I meant it—

X Q. 37. I don't care what you meant; tell us what you said.

A. Exactly how it was worded, I don't remember.

X Q. 38. Did you say to him, "I am under the idea that the Meehans have got a lease here, or it is my notion they have, or I know they have"?

A. I understood that they did.

83 X Q. 39. You said, "I understand the Meehans have got a lease here"?

A. Yes.

X Q. 40. What did Jones say to that, if anything, when you told him?

A. I don't remember whether he said anything; I don't think he did.

X Q. 41. Do you remember what you said after that?

A. No, sir. We wasn't down there long.

X Q. 42. I didn't ask you how long you were there; I am asking you what you said. You walked back up to the hotel together?

A. Yes, sir.

X Q. 43. Any conversation on the way up?

A. Nothing but about the timber up river.

X Q. 44. Not another word said about the subject of the lease or the building of the mills or Meehans' rights or anything of that sort?

A. No, sir.

X Q. 45. Who did you first tell this talk to after you and Jones had had it?

A. I don't remember of anybody.

X Q. 46. How did you happen to be a witness here today?

A. Well, I remembered the conversation and how the thing came up, and I happened to drop in here and was called on.

X Q. 47. You went and told somebody about it, or they wouldn't have known how to call you. Who did you tell first? That is what I am after.

A. I don't remember. I think the thing was spoke of at different times by different parties.

X Q. 48. There couldn't anybody speak of it until you told them. Who did you first tell, after you had had your talk with Jones, that Jones had been told by you that you had an idea that the Meehans had a lease?

A. I have told it to several parties.

X Q. 49. You have told that talk around town?

A. Yes.

X Q. 50. And so today you happened to drop in and they asked you to tell it. Is that it?

A. That is the way it seems.

X Q. 51. Seems? Is that the way it is?

A. Yes, sir.

X Q. 52. You didn't come over here as a witness today?

A. I was called on as a witness.

X Q. 53. It was an accident, your arriving in town?

A. No, sir.

X Q. 54. Came over for the purpose of testifying, didn't you?

A. I was over here several times.

X Q. 55. I say you came over here today to testify; that is your business here today?

A. After I was called on I did. I didn't know I was going to be called on, though.

X Q. 56. What is your business now?

84 A. At present?

X Q. 57. Yes.

A. I am holding a claim—homesteading—and down here on business.

X Q. 58. Where do you live?

A. In Beltrami county.

X Q. 59. Where is your home?

A. Beltrami county.

X Q. 60. Do you vote in Thief River Falls?

A. No, sir; I haven't voted here in the last couple of years.

X Q. 61. Have you ever voted here?

A. Yes, sir; I believe I voted once.

X Q. 62. When you lived in Beltrami county?

A. Yes, sir; I believe I voted once.

X Q. 63. When was that?

A. About two years ago, I think.

X Q. 64. Have you ever been working for the Meehans in any way?

A. Yes, sir.

X Q. 65. When?

A. I worked for them off and on for three or four years.

X Q. 66. Recently?

A. Yes.

X Q. 67. Working for them now?

A. No, sir.

X Q. 68. How long since you quit their service?

A. I haven't worked for them any this year.

X Q. 69. Working for them in 1894?

A. Yes, sir; I worked some for them in 1894.

X Q. 70. Before or after you had the talk with Jones?

A. Both.

X Q. 71. Working for them at the time you had the talk with Jones?

A. No, sir.

X Q. 72. How long before that had you quit working for them?

A. I forget exactly how long it was.

X Q. 73. Well, about how long?

A. About a month or so.

X Q. 74. You went to work for them after the talk some time?

A. Some time later—last fall.

X Q. 75. Off and on, you say, you have worked for them several years?

A. Not several; no; I haven't known them several years.

X Q. 76. Well, a year or two, then?

A. Yes, sir.

JAMES MEEHAN, JR., a witness produced on behalf of the complainants, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to this cause, testified as follows in answer to interrogatories propounded to him by Mr. Rinehart:

Q. 1. You are connected with the firm of P. & J. Meehan?

A. Yes, sir.

85 Q. 2. You know the ten-foot strip in controversy here?

A. Yes, sir.

Q. 3. You know the building that is erected down there, the house on the ten-foot strip?

A. Yes, sir.

Q. 4. When was that erected?

A. Friday, in December some time, the 15th, I think. Friday, the 15th day of December, 1894, it was commenced and occupied. (Referring to memorandum.) The 14th day of December, 1894, on Friday.

Q. 5. Has there been men in your employ in the occupancy of that place since that time?

A. Yes, sir.

Q. 6. Up to the present time?

A. Yes, sir; almost continuously.

Q. 7. Have they had a place to sleep in there?

A. Yes, sir; there is furniture in there now.

Q. 8. What time was it you erected the barb-wire fence along this strip?

A. On Saturday, the 16th of December; possibly commenced on Friday; I don't remember now.

Q. 9. At the time that those were erected there was there any other person occupying lot one?

A. No, sir.

Q. 10. How long have you known this lot one, this tract in controversy here?

A. I have known it, I think, since 1891; since we made the lease with Moose Dung first.

Q. 11. Who had occupied that lot one before you erected your barb-wire fence and house there?

A. I don't think any one had occupied it.

Q. 12. Had you ever seen any one living on there or occupying the land?

A. Peter Burhart occupied it temporarily, but there wasn't any one else there.

Q. 13. Did you know Moose Dung?

A. Yes, sir.

Q. 14. Did you know where he lived?

A. Yes, sir.

Q. 15. Where did he live?

A. Well, the first year we were here, when we made the lease with him, he was living in a shanty at the mouth of Thief river.

Q. 16. When were the piers and booms put in along that strip?

A. I think they were put in in the year 1892.

Q. 17. What, if you know, were the acts of P. and J. Meehan on that ten-foot strip in the way of keeping it or being in possession of it since 1891?

A. They used it for pulling logs out of the river and let them lay on the strip, and also placing piling thereon for the purpose of holding our boom and allowing passage for other logs to go by.

Q. 18. And those piers and booms have been there ever since 1892?

86 A. Yes, sir; I think it was 1892.

Q. 19. And how much of the time have logs been hauled upon the bank?

A. We hauled them out on two different occasions; hauled all the logs out.

Q. 20. In the fall of the year?

A. In the fall of the year and I think in the summer one time also.

Q. 21. How long did they lay there when pulled out?

A. Some laid there a year and some about four or five months.

Q. 22. You and your employes—have you been in the habit of going along that ten-foot strip to do that work?

A. Yes, sir; continuously.

Cross-examination.

By Mr. DAVIS:

X Q. 1. That shanty was built for the specific purpose of showing an occupancy since this trouble between the Meehans and Jones arose, was it?

A. Yes, sir; I think it *it* was to show—

X Q. 2. That was the prime purpose of building the shanty?

A. To show our occupancy of the strip.

X Q. 3. And the purpose in keeping somebody in there was simply

to have it occupied by some of your employés for the purpose of showing occupancy under this litigation, was it?

A. I suppose it was put there to make our occupancy more strong than it was before.

X Q. 4. The men who remained there were there for that purpose of holding it, with that object in view?

A. Yes, sir.

X Q. 5. That is, to have a human being in there who was in your employ for the purpose of maintaining and asserting the right of occupancy?

A. Continuously; yes, sir.

X Q. 6. The barb-wire fence cuts no other figure than to also maintain your right of occupancy, does it?

A. To assert our rights there; yes, sir.

X Q. 7. It is not essential to the operation of your mill or booms or anything of that sort?

A. It is very essential that we should not permit any one to go in there.

X Q. 8. What I mean is, the barb-wire fence don't assist you in the operation of handling your logs or operating your mill?

A. It does when there is a question of other people coming in.

X Q. 9. You understand what I mean; don't quibble about it. The barb-wire fence plays no part save to keep others out who might claim adverse right; that is all, isn't it?

A. Yes, sir; I think the barb-wire fence is essential.

X Q. 10. I don't care what you think about it; I am asking you for the facts. I say the barb-wire fence cuts no other figure in the operation of your mill and the handling of your logs except to keep people off the strip, showing that you claim the right of occupancy?

87 A. It protects us in our privileges.

X Q. 11. How does it help you to handle logs?

A. It keeps other parties from injuring you.

X Q. 12. How does it help you to handle logs? Does it assist booming logs?

A. It assists us in protecting the property.

X Q. 13. Does it assist you in booming logs—that is the question—or storing them?

A. Not physically.

X Q. 14. That is what I am after. Does it help you in the operation of the mill, physically?

A. Only so far as to prevent any physical force from intruding.

X Q. 15. To keep intruders from coming in and doing business in opposition to you?

A. Yes. Not doing business in opposition to us, but doing business on ground that belongs to us.

X Q. 16. We understand about that belonging business. If that was true, we wouldn't have any lawsuit. We will settle that in court. These men who stay in there—what business do they do for you?

A. They work around at different work.

X Q. 18. Regular employés?

A. Regular employés.

X Q. 19. Hired by the day or month or week, or however you hire them?

A. Yes, sir.

X Q. 20. These piles that you speak of as being driven on this land are out in the bed of the river?

A. They are on the land attached to the strip.

X Q. 21. How far distant from the river bank?

A. I think they measure 30 feet.

X Q. 22. All 30 feet out?

A. Not precisely; we came as close to it as we could.

X Q. 23. Is there any one of them that is so near as 30 feet to the bank?

A. I don't know that the stage of the water now is the same as it was at the time we drove the piling.

X Q. 24. How are they now; how far out from the bank of the river?

A. They are supposed to be 30 feet.

X Q. 25. Are they that? I want to know what they are, if you know.

A. I haven't measured them lately, but I think that is the distance they are.

X Q. 26. Some are further?

A. Some are a little further; vary probably a foot or two.

X Q. 27. None are less?

A. They might be a little less; I think some of them are.

X Q. 28. How much less?

A. I ain't going to confine myself to small limits.

X Q. 29. Just give me your best estimate.

A. I told you they were on an average of 30 feet from the shore.

X Q. 30. That is the best judgment on the subject that you have?

A. Yes, sir.

88 X Q. 31. Do you know where there are some iron stakes placed there by the Jones people for the purpose of locating a prospective site for the mill?

A. No.

X Q. 32. Never saw those stakes?

A. No, sir.

X Q. 33. Do you know how many piles are directly in front of the little wooden building you have?

A. There is possibly one directly in front.

X Q. 34. And the nearest one—

A. Three surrounding it.

X Q. 35. The nearest one above would be about 50 feet up the river?

A. Forty, I think; forty or fifty.

X Q. 36. And the nearest one below would be about the same distance—forty or fifty feet?

A. Yes.

X Q. 37. Do you recall when those piles were put in the river?

A. They were put in at different times; we drove them at different times. I think in 1892 we drove them first.

X Q. 38. Are you sure about that?

A. I am not positive about it.

X Q. 39. Weren't the first ones put in there in the spring of 1893, Mr. Meehan?

A. Well, it might have been spring; I would not be positive whether it was 1892 or 1893. I know it was after we had our first jam of logs. We filled the river up the first year we was there.

X Q. 40. Did you yourself assist in the construction of the barb-wire fence and building?

A. I sent the men to the building.

X Q. 41. Were you down there?

A. Yes, sir; off and on.

X Q. 42. Were you present on any occasion when Mr. Knox came down there?

A. Yes, sir.

X Q. 43. And some talk between you and him, he telling you that you were trespassers and not to continue the work?

A. I think he told some of the men working on the building there, and ordered them out.

X Q. 44. That Mr. Jones claimed the rights there and ordered them out?

A. Yes, sir.

X Q. 45. That was before you had completed the construction of the building and fence?

A. They were working on it, building it, at that time. I think the fence was completed.

Redirect examination.

By Mr. RINEHART:

Q. 23. Those piers and booms are strung up the river in the usual or ordinary way that they are constructed by lumbermen in streams of that kind, are they not?

89 Objected to by defendant as incompetent, irrelevant, and immaterial; no foundation laid.

A. They are in the position I have always seen, piling and piers and booms, in a stream of this size.

The defendant moves to strike out the answer of the witness for the same reason as stated in the objection to the question.

Q. 24. And those piers are on the west side of the center of the stream, are they, next to the ten-foot strip?

A. Yes, sir. I consulted an attorney as to what distance the law allowed us to place those pilings along the stream, and he told me. We placed them a little bit further from the shore than the law required us to.

Q. 25. How wide is the Red Lake river?

A. The river is on an average of 250 feet, I think. The span of this bridge is, I think, 210. I think it carries the size pretty well.

Q. 26. Did you hear any of the conversation with regard to your being ordered off of this strip by the representative of Mr. Jones?

A. Yes, sir.

Q. 27. Who was the conversation had by?

A. It was held between Mr. Knox and myself and some others.

Q. 28. Mr. Knox and yourself were the principal speakers?

A. My father was there.

Q. 29. What right did Mr. Knox assert in the premises when he came down there?

A. He asserted considerable right. He stated that he was sent there, I think, as an agent of Mr. Jones to order us off.

Q. 30. Did he say under what authority or right Mr. Jones claimed?

A. No, sir; he didn't state.

Q. 31. Did you state to him under what right or authority you or your father claimed?

A. I don't think I did. I told the men to keep on working and never mind him.

JOHN PETERSON, recalled as a witness in behalf of the complainants, testified as follows in answer to interrogatories propounded to him by Mr. Rinehart:

Q. 1. Do you know a Mr. Knox, a resident of Thief River Falls?

A. Yes, sir.

Q. 2. C. J. Knox?

A. Yes, sir.

Q. 3. Did you ever have any conversation with him relative to the fractional lot one, this building site?

Objected to by defendant as incompetent, irrelevant, and immaterial.

Q. 4. Was you ever upon that land with Mr. Knox?

A. Yes, sir.

Q. 5. When?

A. A year ago, I guess.

Q. 6. A year ago this spring?

A. Yes; I think it was when they first commenced looking up the mill site up there.

90 Q. 7. What conversation did you have with Mr. Knox at that time?

The same objection by the defendant.

A. I went up there to see about where the line ran between the chief's section and the town site—that is, the east and west line.

Q. 8. It would be the north line of the fraction which would run down to the river and out into the prairie?

A. Yes, sir.

Q. 9. And that would be the north line of this little three-cornered piece?

A. Yes; it would be the northeast corner.

Q. 10. What conversation occurred between you and Mr. Knox at that time relative to that lot one?

The same objection by defendant.

A. We went out about where the line was, and down that cooley, and we went over to see the chief to see if he would lease it, and we got the chief. He come over, and we walked around about where the line was—that is, the northeast corner—back down the river, down that cooley.

Q. 11. What do you mean by the cooley?

A. It is a cooley that runs in through the section.

Q. 12. Does that come onto lot one?

A. I don't know just how far that is in there, but anyway it was along that cooley. We found the chief, and I interpreted for Mr. Knox. He wanted to know if he would lease that, and he said that he didn't know whether he could or not, because Mr. Meehan had a lease of the four-foot strip he told me at the time. I might have misunderstood him or something, but I took it that it was a four-foot strip that the Meehans had a lease on, and he asked him again if he would lease it and inquired how much he was getting from Mr. Meehan a year, and he didn't exactly say how much he was getting from Mr. Meehan, and Mr. Knox told him that there was a new mill company going to come up here and wanted to lease it from him, and he thought they would probably give him a little more than Mr. Meehan was paying him for the land or was going to lease it that summer. That was about all the conversation that we had with the chief.

Q. 13. Did Mr. Knox say what interest he had in the matter of the lease?

A. No, sir.

Q. 14. Did he say as to whether or not he claimed to be acting for this new company that was coming up?

A. No; he didn't say that he was; he was just looking up to see whether he could get the lease of it or not for this new company.

The defendant moves to strike it all out for the reasons stated.

Cross-examination.

By Mr. DAVIS:

X Q. 1. Did the Indian say in that conversation anything about the lease to the Meehans not being any good?

A. No, sir; not at that time.

X Q. 2. Well, some other time did he?

91 A. Well, yes. I don't remember when that was. It was some time afterward. I believe at the time that they had the Jones man up here in the hall. I don't know when it was. It was a day or so before that.

Further proceedings in this matter were adjourned until 7 p.m. to be resumed in the city of Crookston, Minnesota.

Title of Cause.

Deposition of Albert Wickstrom, taken on behalf of the complainants, at the Commercial hotel, in the city of Crookston, State of Minnesota, on Monday, the 20th day of May, 1895, before Richard A. Mabey, special examiner in this cause, pursuant to a stipulation and order of court on file herein.

Present on behalf of the complainants, Orville Rinehart, Esq.; on behalf of the respondent, Frank F. Davis, Esq.

Thereupon the following proceedings were had, to wit:

ALBERT WICKSTROM, a witness produced on behalf of the complainants, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows in answer to interrogatories propounded to him by Mr. Rinehart:

Q. 1. Mr. Wickstrom, what position do you hold?

A. Register of deeds.

Q. 2. Of Polk county?

A. Yes, sir.

Q. 3. State of Minnesota?

A. Yes, sir.

Q. 4. You are custodian of the public records in the office of the register of deeds?

A. Yes, sir.

Q. 5. (Showing witness book.) What is this book here?

A. That is Miscellaneous Record Book E.

Q. 6. Part of the public records kept in your office, is it?

A. Yes, sir.

Q. 7. In which instruments are recorded for record?

A. Yes, sir.

Mr. RINEHART: I turn to pages 69 and 70 of Book E of Miscellaneous Records, and introduce in evidence the record of lease from Moose Dung to Patrick and James Meehan, dated the 7th of November, 1891, filed November 10, 1891, at 8.30 o'clock a. m.

Mr. DAVIS: I object to the offer as incompetent, irrelevant, and immaterial, and move to strike it out for the reasons suggested.

Mr. RINEHART: I will hand to the examiner this certified copy to be used, because we cannot carry the book away from here.

Mr. DAVIS: Yes, sir; that is all right. I shall be satisfied to have that certified copy and use it in the case.

Marked Complainants' Ex. "B."

Further proceedings in this cause were thereupon adjourned until Tuesday morning, May 21, 1895, to be resumed at the White Earth Indian reservation.

ROBERT FAIRBANKS, a witness produced on behalf of the complainants, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows in answer to interrogatories propounded to him by Mr. Rhinehart :

Q. 1. Of what nationality are you ?

A. I am mixed blood.

Q. 2. Mixed blood of English ?

A. And Chippewa.

Q. 3. How old are you ?

A. 63 years old.

Q. 4. Do you understand the English and Chippewa languages ?

A. Yes, sir.

Q. 5. Where do you reside now ?

A. White Earth station here.

Q. 6. Where did you reside in 1863 ?

A. At Crow Wing on the Mississippi.

Q. 7. What occupation were you engaged in at that time ?

A. I was a trader—Indian trader.

Q. 8. Were you present at the negotiations which culminated in the making of the treaty between the Red Lake and Pembina bands of Chippewa Indians at the Old Crossing of Red Lake river October 2, 1863 ?

A. I was, sir.

Q. 9. Did you hear the speeches and conversations which occurred at the various councils that were held ?

A. Yes, sir.

Q. 10. Were you able at that time to understand both the English and Chippewa languages ?

A. Yes, sir.

Q. 11. Were you there in any official capacity at that time ?

A. I was there as a trader.

Q. 12. Did you hear anything said there at that time between the Chief Mon-si-moh and the commissioners in regard to some land that was asked for by Mon-si-moh at the west side of the mouth of Thieving river ?

A. Yes, sir.

Q. 13. You may state to the best of your recollection what you heard ?

Objected to by defendant as incompetent, irrelevant, and immaterial.

A. Moose Dung asked Ramsey for a tract of land at the mouth of Thieving river for himself and children, to live on it as a reservation for himself and children.

Q. 14. What did the governor say to that ?

A. Ramsey told him yes. Says he, " You are a very smart man to think of your children and provide a home for them." If I recollect that is the word that Ramsey used.

Q. 15. Did you hear any of the conversations that occurred just before the treaty was signed?

A. Yes, sir.

Q. 16. Did you hear any of the explanations that were asked for by Mon-si-moh at that time?

Mr. DAVIS: The same objection to any conversation.

93 A. If I recollect right he asked Ramsey if he could have that land for himself and children, and Ramsey told him yes the second time. I think that is the correct conversation.

Q. 17. Did you know Moose Dung before that time?

A. Yes, sir.

Q. 18. Had you ever seen him at the mouth of Thieving river?

A. Yes, sir.

Q. 19. Whereabouts in that vicinity?

A. Well, it was about a mile below the mouth of the Thieving river, camping there.

Q. 20. Did you ever see him there after that time?

A. No, sir; I just went there once and saw him there.

No cross-examination.

Mr. DAVIS: I make a motion to strike out that testimony.

Further proceedings were adjourned to be resumed in the city of St. Paul.

Title of Cause.

Depositions of witnesses on behalf of the complainants, taken at the office of the Indian agent, White Earth Indian reservation, in the county of Becker, State of Minnesota, Tuesday, May 22, 1895, before Richard A. Mabey, special examiner in this cause, pursuant to a stipulation and order of court on file herein.

Present on behalf of the complainants, Mr. Orville Rhinehart; on behalf of the respondent, Mr. Frank F. Davis.

And thereupon the following proceedings were had, to wit:

PAUL H. BEAULIEU, a witness produced on behalf of the complainants, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Rhinehart:

Q. 1. What is your occupation, Mr. Beaulieu?

A. Interpreter.

Q. 2. What languages do you speak?

A. English, French, and Chippewa.

Q. 3. How long have you been an interpreter?

A. For whom?

Q. 4. Well, how long have you been able to interpret from Chippewa to the English language; for how many years have you acted as interpreter?

A. I have been able to interpret the three languages since I was twelve years old.

Q. 5. And how old are you now?

A. I was born in 1817, on the 10th of May.

Q. 6. Where did you reside in 1863, Mr. Beaulieu?

A. In 1863 I resided at the Chippewa agency on the Crow Wing river.

Q. 7. Near the present site of Brainerd?

A. Nine miles this side of Fort Ripley, north of Fort Ripley.

Q. 8. Do you remember the circumstances connected with the negotiation of a treaty concluded at the Old Crossing of the Red Lake river on October 2, 1863, between the Red Lake and
94 Pembina bands of Chippewa Indians and the commissioners of the United States?

A. Governor Alexander Ramsey, was it?

Q. 9. Yes.

A. Yes, sir.

Q. 10. Do you remember the circumstances?

A. I do.

Q. 11. How long had you lived among the Chippewa Indians prior to that time?

A. Well, except the time that I was at school.

Q. 12. Oh, just in a general way?

A. Since I was born, only the time that I went to school; I made my home with the Chippewas all the time.

Q. 13. Did you know the bands of Red Lake Indians that were present at the making of that treaty?

A. Perfectly.

Q. 14. Did you know where their homes were, in what part of the —?

A. I did.

Q. 15. Did you know a chief of one of those bands of Red Lake Chippewas called Mon-si-moh, or, in English, Moose Dung?

A. I did.

Q. 16. How long had you known him prior to 1863?

A. I became personally acquainted with him in 1841.

Q. 17. Did you know where he lived?

A. Yes, sir.

Q. 18. Where did he live from the time that you knew him up to the time of the treaty?

A. That is a pretty hard question.

Q. 19. Well, the general section of country, I should say—that is, in what region?

A. He lived at Red Lake, at what they called Little Rock Creek. A part of the time he lived at Thieving River or in that proximity.

Q. 20. Did you know him after the conclusion of the treaty?

A. I did.

Q. 21. For how many years?

A. Till the time of his death.

Q. 22. Do you remember when that was?

A. I do not know positively; I have memorandums that will show.

Q. 23. About how many years; just at an estimate?

A. I think it was something like 1867 or 1868.

Q. 24. That he died?

A. I think so; just about that time.

Q. 25. Do you know where he lived between the years 1863 and 1867 or 1868?

A. Well, he lived part of the time at Little Rock Creek, on Red lake, and part of the time over towards Thieving river or along the Red River of the North.

Q. 26. What part did you take in the negotiation of this treaty of 1863?

95 A. I was the interpreter for the commission that negotiated the treaty.

Q. 27. The official interpreter of the United States?

A. The official interpreter.

Q. 28. During how many days did these negotiations last, to the best of your recollection?

A. About a week.

Q. 29. Were you present during all of the negotiations?

A. Yes, sir; I endeavored to get to every council; I had no assistant.

Q. 30. And at the conclusion of the councils or negotiations the treaty was signed between the commissioners and the Indians, was it?

A. With the exception of May-dwa-gun-on-ind and Little Rock; he didn't sign and May-dwa-gun-on-ind didn't sign.

Q. 31. Was Chief Mon-si-moh present at this council?

A. Yes, sir.

Q. 32. Did you at that time hear any speeches or conversations between the chiefs there present or any of them and the commissioners relative to the giving to the Chief Mon-si-moh of a mile square of land on the west side of the mouth of Thieving river?

A. Do you wish me to state?

Q. 33. Yes; I wish you to state whether or not you heard any such conversations or speeches.

A. During a council—

Mr. DAVIS: Don't state what it was, but whether you heard it or not.

Q. 34. Just answer yes or no.

A. That is what I am coming at, sir.

Q. 35. Don't tell what it was till you have answered the other question. Simply say whether you heard any speeches relating to that matter, and, if you did, then we will ask you afterwards what the speeches were.

A. I did; speeches not from the Indians, but from himself.

Q. 36. Now, you may state what was said there at those councils by the Indians and by the commissioners in your own way, according to the best of your recollection, relative to this land.

Mr. DAVIS: Objected to as incompetent, irrelevant, and immaterial.

A. Mon-si-moh said, "I have heard of your offers (that is, to the commissioners). You say that you are to give me a million of dollars for the land that I am going to cede. A million of dollars is a great deal of money, but there is something that I would consider more than a million dollars, if the commissioners would grant me that request." Mr. Ramsey asked him what it was. He said that he wanted to get a reservation of a section of land at the mouth of Thief river for himself and family to live on; that would be an inheritance for himself and his family. That is the word, sir, that he used.

Q. 37. You may follow that up by what Mr. Ramsey said.

A. Mr. Ramsay said that it was taking a great deal of time, and he was getting very impatient; that there might be some other things asked for before they had concluded, but that he would have no objections in giving him that land for himself and family,
96 to which the Indians responded, "Ho." That meant all right; that it met their views. That is the way I considered it.

Q. 38. Now, of course, in interpreting between the commissioners and the Indians you used the words most fitting to convey the meaning from one to the other, considering the difference in the languages, Mr. Beaulieu. You used, so far as you was able, the most fitting expressions, of course?

A. Interpreting, sir, is a profession like everything else, and it is a hard one. Sometimes when you have to interpret, to make common sense you have always got to put the horse before the cart. I have found that out. In interpreting, sir, I always convey the true meaning of the words that are uttered.

Q. 39. Now, do you remember, during the pendency of those negotiations and just before the treaty was signed by the chiefs, as to whether Mon-si-moh asked for any explanation of the language of the treaty before he signed his name to it?

A. He did.

Q. 40. Now, you know the contents of the article of the treaty which mentions the Moose Dung land, do you?

A. It was the last article; yes, sir. That article contained for two persons; for Mon-si-moh, one at the mouth of Thief river, and one for Red Bear, at Pembina.

Q. 41. Now, do you remember as to whether or not Mon-si-moh asked for any explanation as to this article, mentioning the land that was to be set apart to him?

A. Yes, sir.

Q. 42. And do you remember as to whether or not you made any explanation to him in regard to that land?

A. Yes, sir.

Q. 43. Now, you may state, to the best of your recollection, what Mon-si-moh asked you. First, I will ask you whether that was in the presence of the other chiefs and head men who signed the treaty and of Mr. Morrill.

A. It was in the presence of the whole of the men and the whole council.

Q. 44. Now, I will ask you what explanation Moose Dung asked

at that time and what explanation you made to him concerning the meaning of the terms used in that article of the treaty.

Mr. DAVIS: Objected to as incompetent, irrelevant, and immaterial.

A. Mon-si-moh asked, "How shall I feel satisfied in my mind that that land shall be mine and my children's forever?" Gov. Ramsey replied to him that there was patents issued in them cases. I spoke then and said, I can't state that; there is no such word as patent in my language. I used something else. I said, "Te-bain-daus-o-mun-ze-nuh-e-gun." That is the nearest I can come to it; a paper that states that it is this: You will own it forever; but that don't convey the true meaning of a patent, and then—can I continue?

Q. 45. Yes, sir.

A. Mr. Ramsey then said he spoke to Mr. Wheelock, and Mr. Wheelock told it that will be right. I know what was said
97 or what question Mr. Ramsey asked him—"What word shall we insert to guarantee him that land?" Well, he says, we will insert in the minutes, "It shall be certified to him," and in accordance therewith anything certified to anybody in black and white, those that certifies to it are held responsible for that certificate.

Q. 46. What did you tell Moose Dung then?

A. I told him, sir, that that would be a certificate that that land should be his and his children's forever.

Q. 47. And after you had explained the meaning of those words of that article in that way to Moose Dung did he sign the treaty?

A. Yes, sir.

Q. 48. And it was then signed by the other chiefs?

A. He was the first one that signed, and then A-go-noh-wa was the next one, and they began to sign.

Q. 49. What was the English of the last name?

A. Bleeding Feather; he is the second man that signed, and then the third man that signed was Ne-meh-kis, and Little Thunder, as far as I can remember, and Crooked Arm, and then pell mell.

Mr. DAVIS: The motion is to strike out all the testimony relative to any conversation with Moose Dung or with Alexander Ramsey or any other commissioner or chief on that occasion.

A. That, I think, you will find in the minutes of their council, which I think Mr. Wheelock has at the present time. I am pretty positive he has got it.

Q. 50. Whether or not it is in the minutes of the council, the conversation occurred there at that time?

A. Yes, sir.

Cross-examination.

By Mr. DAVIS:

X Q. 1. Was this treaty put in writing on that occasion, Mr. Beau-lieu?

A. Yes, sir.

X Q. 2. Was it read over to the Indians who signed it on more than one occasion?

A. It was read and interpreted and translated by me three different days; twice on one day, and once on the other.

X Q. 3. Do you remember how long before the Indians signed it it was that it was last read to them?

A. It was just immediately after reading it the last time.

X Q. 4. And on that occasion you read it in the form in which it now stands in the records?

A. In the records; yes, sir.

X Q. 5. Mon-si-moh was present?

A. Yes, sir.

X Q. 6. Heard it read the last time?

A. Yes, sir. He was there, ready. If they hadn't given him that reservation, he wouldn't have signed.

X Q. 7. Yes; I understand; but I say he was there when it was all read over?

A. Yes, sir.

98 X Q. 8. And then he put his signature to the treaty?

A. Yes, sir. He was the first one that put his signature.

Title of Cause.

Deposition of Joseph A. Wheelock, taken on behalf of the complainants — the Pioneer Press office, in the city of St. Paul, on Tuesday, the 11th day of June, 1895, before Richard A. Mabey, special examiner in this cause, pursuant to a stipulation and order of court on file herein.

Present: On behalf of complainants, Orville Rinehart, Esq.; on behalf of the defendant, F. F. Davis, Esq., and James A. Kellogg, Esq.

Thereupon the following proceedings were had, to wit:

JOSEPH A. WHEELOCK, a witness produced on behalf of the complainants, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows in answer to interrogatories propounded to him by Mr. Rinehart:

Q. 1. Your name is Joseph A. Wheelock?

A. Yes, sir.

Q. 2. And you are a resident of St. Paul, Minnesota?

A. Yes, sir.

Q. 3. You were a resident of the State of Minnesota in 1863?

A. Yes, sir.

Q. 4. Do you remember the circumstances connected with the negotiation of the treaty with the Red Lake and Pembina bands of Chippewa Indians at the Old Crossing of the Red Lake river in 1863?

A. I recall some of it.

Q. 5. Do you remember that there were such negotiations?

A. Oh, yes.

Q. 6. You may state who those negotiations were conducted by on the part of the United States.

A. I knew one of the commissioners was Ramsey and the other was Major A. C. Morrell.

Q. 7. What part did you take in those negotiations?

A. Well, I was asked to accompany that expedition as secretary of the expedition.

Q. 8. Did you act as secretary to the commissioners during the negotiations which led up to the conclusion of the treaty?

A. Well, in a sense, yes; in the only sense in which I could act—that is, the proceedings were carried on in an unknown tongue. I mean except so far as they were translated by the interpreter, and I endeavored to give an account of the proceedings from beginning to end, so far as they were published.

Q. 9. Did you keep any record or journal of the proceedings as they occurred?

A. Well, of course; I must have kept a record of them. I have no distinct recollection. Yes, of course; as the proceedings went on I took notes of what transpired and of the speeches. I tried to keep a record of the speeches.

Q. 10. The speeches that were made by the commissioners and the speeches made in response by the Indians?

A. I tried to keep such a record.

Q. 11. Was that a duty which devolved upon you in your position of secretary, to keep such minutes?

99 A. Well, I was left very much to my own interpretation of my duty as secretary; I can tell you that.

Q. 12. Did you accept this as one of your duties?

A. Yes; I regarded that as one of my duties—to keep minutes of it.

Q. 13. Were they written down at the time by you?

A. Yes—that is, I suppose they were written down. Yes; they were written down. I suppose the report I made up afterwards must have been written from the notes. That is only an indistinct recollection.

Q. 14. But you had a journal of the daily proceedings from which the report was made, for instance?

A. Yes; I took those notes.

Q. 15. That was taken at the time while the matter was fresh in your mind?

A. Yes.

Q. 16. And as it occurred?

A. Yes; as it occurred.

Q. 17. Was the speeches on the part of the commissioners made in English?

A. Yes.

Q. 18. And the speeches on the part of the Indians was made in what?

A. Indian, and translated; interpreted by Paul Beaulieu, the interpreter.

Q. 19. Did Paul Beaulieu do all the interpreting for you?

A. I think he did it all. My impression is he did it all, as far as I recollect.

Q. 20. And your minutes were taken from his interpretation of the Indian speeches?

A. From the Indian interpretation. I think he was all, although I may be mistaken. He is the only one I recollect.

Q. 21. Were those minutes a true statement or exposition of the matters that were stated and interpreted to you at that time?

A. Oh, well, I suppose so. I had no motive for making them otherwise.

Q. 22. You endeavored to keep them correctly?

A. Yes; of course. I wish to say right here that my idea of reporting that treaty was to give more the picturesque aspects of the story rather than any formal official account of the proceedings, because I understood from the commissioners themselves that they would make a report to embody all this. Now, mark you, this is simply my recollection. It is so far back that it is largely a matter of inference. I was there as secretary, and I assume that, inasmuch as I made a report, I know I took notes at the time, because I recollect that; but I didn't understand that my report was to be the only evidence of what transpired; that that was to be the subject of the report by the commissioners.

Q. 23. At the same time did you endeavor in those matters to make those minutes a true exposition of the Indian character?

A. Oh, just as it impressed me; yes.

Q. 24. And of the speeches that were made by the Indians and interpreted to you; a true record of the Indian form and mode of expression and the idioms?

100 A. Yes; as translated and interpreted, although I must say I have some doubts as to the literal accuracy of the translation.

Q. 25. Do you remember this Indian chief Moose Dung?

A. Yes; I recollect him very well.

Q. 26. What part did he take in the negotiations?

A. Well, he took a leading part in the negotiations for the treaty. It was understood, in fact, there by everybody, so far as I know—that is, the common talk, you know—that he was doing what he could to bring about that treaty; that he was a leader, in fact the foremost and most influential in trying to have anything to do about the treaty. He was talked of as a friend of the whites, in contradistinction of some other Indians who were very bitterly opposed to the treaty; one of them especially. I have forgotten the name; a leading chief.

Q. 27. May-dwa-gun-on-ind?

A. Probably.

Q. 28. He didn't sign?

A. He didn't sign; yes. Well, he had a following there more or less.

Q. 29. Did you draw up the formal report that was made by the commissioners?

A. No; I think not. I don't recollect that I did. I don't think I did.

Q. 30. Do you remember what you did with the journal or minutes that you kept at that time?

A. Well, I wrote a report from those minutes and translated it. I suppose probably I handed it to Ramsey. He, as I understood it, transmitted it to Washington. I know it got to Washington somehow. I don't recollect whether I transmitted it immediately, but it was probably sent by him.

Q. 31. Your recollection of the occurrence at this time is that it went to the Indian Bureau at Washington?

A. I think it did, yes; that is my impression.

Q. 32. What was the state of the country up in that region at that time?

A. The state of the country was such that we had to take a military company of troops along with us, under Major Camp from Minneapolis, to protect us from possible attacks by Sioux Indians.

Q. 33. Was any land or country up there inhabited by white people at that time?

A. No; there was no white people there then; they were all scared off. It was before Abercromby brought his troops there.

Q. 34. Did you know anything of the location of the country at the junction of the Thief and Red Lake rivers?

A. No; nothing except I heard it talked about.

Q. 35. How far was that from the place where the treaty was concluded?

A. It wasn't very far from there. I don't recollect how far. I remember it was pointed there on the map somewhere on Thief river. There was talk about it a good deal.

Q. 36. You say you remember Thief river being spoken of. In what connection was it spoken of?

A. It was understood that this Chief Moose Dung was to have some land there. He wanted a tract of land there, and it was understood he was to have a tract of land; that was talked about originally. Of course that was a subject of general conversation. Everybody felt kindly to Moose Dung, because he was very efficient and energetic about the treaty. I don't think we could have got along without him, and the people around there—I don't know who now, but pretty nearly everybody—were concerned in and about the treaty, and the commissioners talked about this grant of land to this Chief Moose Dung.

Q. 37. As you remember it then the idea was to give him something—some sort of a token?

A. Yes; a recognition for his services.

Mr. KELLOGG: We object to that question as incompetent, irrelevant, and immaterial and leading.

A. It was generally understood to be in recognition of his services in helping to make the treaty, as I understood it.

Q. 38. Do you know anything about the value of land in that vicinity at that time?

A. Oh, well, it was all wild country, I don't suppose it had any. I guess they paid about a cent and a half an acre for the land. I

don't know anything about the value of land. Of course, it had no value except prospective value.

Q. 39. The Indians were roaming over that country at that time. Were they at large?

A. Oh, yes.

Q. 40. And occupying portions of it, were they?

A. Yes, occupying it in a sense—they hunted over it. I recollect distinctly in the negotiations for the treaty they claimed the territory way west. I guess that was mentioned in the treaty. Yes, I know it was; it was way west of the head-waters of these rivers on the west side of the river.

Q. 41. Cheyenne?

A. Cheyenne, yes. Of course, they roamed over it, but these Chippewa Indians were not plain hunters. They hunted in the woods and lived on fish and wood game more than they did upon the prairie. They didn't hunt so very much on the prairie, and they rather kept out of the way of the plain district because the Sioux were too close to be comfortable, so it was a sort of neutral territory in there.

Q. 42. Well, the mere right of occupancy of that country by the Indians, what did that amount to?

Mr. KELLOGG: Objected to as incompetent, irrelevant, and immaterial and asking for the opinion of the witness.

A. Well, I don't know anything about that. I know they claimed it. They claimed to have occupied all of it and had rights there. I am speaking now of the country west of the plain country. I am not speaking of this country. That was wooded country up there at Thief river.

Q. 43. That is the country I am speaking of.

A. That is not the country I am speaking of. That wooded country was country which was occupied by the Indians, and they fished and hunted there. It was Chippewa country and associated with the Chippewas, and the Chippewas lived there and fished and hunted and roamed over it.

Q. 44. Do you remember in these talks that were had there concerning the giving of this land to Moose Dung as to whether anything was said as to the particular kind of rights or estate which was to be given him?

Mr. KELLOGG: Objected to as incompetent, irrelevant, and immaterial and the record made by the Indians would be the better evidence.

A. Well, I doubt very much whether I made my record of that thing, because it was outside of the general council.

Q. 45. It was mentioned in the treaty. You may have made some record of it.

A. Possibly, I don't know; I couldn't tell about that.

Q. 46. I was asking you whether you remembered of any conversation at that time as to the particular kind of rights they were going to give him. You say there was talk about granting him

this land there, and at the risk of being leading I will ask you whether you remember whether they were giving him a right to occupy that land or giving him the land?

MR. KELLOGG: Objected to as incompetent, irrelevant, and immaterial and the treaty would be the better evidence.

A. Well, that I couldn't answer. All I could say was he was very urgent in getting this land somewhere at the mouth of Thief river, I think, and Red river, but just in what form he was to have it I couldn't say now. It was understood that he was to have some land there, but whether it was to be his in fee or whether it was to be a right of occupancy that is something I don't know anything about.

Q. 47. You don't remember as to the details of that?

A. No; I don't remember.

Q. 48. If you did make any record at that time that record was as true and correct as the rest of the record that you kept of the proceedings, was it?

A. Oh, yes; if I made any record of it, but as I say I was not giving the official report of all the proceedings at all, it wasn't expected of me.

Q. 49. Well, it was supposed to be sufficiently correct, wasn't it, from which you framed the report to the commissioners?

A. I don't think the commissioners' report was based on my report at all. I don't think it was. As I understood it, they simply reported the effect of this treaty—the means by which they effected it or the means which led up to it. I don't think they reported at all.

Q. 50. But if as a matter of fact their report should be other than that, the report would be more correct than your recollection, wouldn't it?

A. Oh, yes; of course. My recollection of 22 years ago, of course, is indistinct, very indistinct.

No cross-examination.

Further proceedings in this matter were adjourned until Friday, the 14th day of June, 1895.

Title of Cause.

103 Depositions taken on behalf of the complainants, at the city of St. Paul, on Friday, the 14th day of June, 1895, before Richard A. Mabey, special examiner in this cause, pursuant to a stipulation and order of court on file herein.

Present: On behalf of the complainants, Orville Rinehart, Esq.; on behalf of the respondent, F. F. Davis, Esq.

Thereupon the following proceedings were had, to wit:

ALEXANDER RAMSEY, a witness produced on behalf of the complainants, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded by Mr. Rinehart:

Q. 1. You are the same Alexander Ramsey who acted as one of the commissioners on the part of the United States in negotiating a treaty with the Red Lake and Pembina bands of Chippewa Indians in October, 1863, are you?

A. Associated with Mr. Morrill.

Q. 2. Mr. A. C. Morrill?

A. Yes; I am the same party.

Q. 3. Do you remember anything of the circumstances of the negotiations of that treaty?

A. Very little, sir; very little. So many years have passed and the thing has not been in my mind; anything about it at all.

Q. 4. Do you remember as to whether or not you made a report of the circumstances connected with these negotiations to the Commissioner of Indian Affairs at Washington?

A. I could not assert certainly that I did or that I have a distinct recollection of doing so, but it was always so incident to the position that I conclude I did do it; made a report of our doings; but any formal report outside of that I cannot now say; always did make a report.

Q. 5. If you did make a report, Governor, that report was made faithfully and correctly at the time, I suppose, was it?

A. I presume so, yes; yes, I should say so.

Q. 6. Do you recollect any of the representatives of the Indians that were there present at the making of the treaty?

A. No; I don't recollect the names of any but Moose Dung or Mon-si-moh.

Q. 7. You remember the Chief Moose Dung who was there present?

A. Oh, yes.

Q. 8. Do you remember as to whether or not he took an active part in negotiating the treaty?

A. He took a very influential part. He was considered very active. He was an old man, comparatively, but he had great influence and took a very influential part, and undoubtedly had much to do in shaping and bringing the Indians to agreeing to the terms of a treaty, and I was very much impressed with the obligations of the Government. We had been there probably three to four weeks before we brought the Indians to a conclusion as to what they would do.

Q. 9. Do you remember as to whether or not this Chief Mon-si-moh or Moose Dung asked for any concession for himself from the United States at that time?

A. Well, sir, I should have forgotten that, except for the conversation I have heard about it; those who have called upon me since this present business in hand here commenced.

Q. 10. Does that refresh your recollection any as to the circumstances, Governor?

A. It does to the fact that we did make a concession to him; that he had set apart for him some pieces of land that we denominated a reservation, or whatever else it might be; whatever denomination we called it. I think it was a reservation. I have not looked at the printed treaty since nor anything else that I had to do in regard to it.

Q. 11. What was the state of the country up there at that time, Governor?

A. Oh, it was an unsettled, uncivilized Indian country; that is all it was.

Q. 12. Was there any particular market value or money value to land in that country at that time?

A. I couldn't say, as I did not live there, and I had no occasion to investigate, as I was not expecting to purchase and had no such conversation with any one. I can say nothing about it.

Q. 13. There were no civilized or white settlements in that country, were there?

A. This is 1863?

Q. 14. Yes, 1863; this country up at Thief and Red Lake rivers.

A. Well, not probably that high. Our treaty ground was at the Grand Crossing, or Old Crossing, we called it, long known as the Old Crossing, near, I think within a mile or so, of where Crookston now stands. Thief river is probably north and east; certainly north. No; I suppose property had no particular value, unless as the imagination of men would impress on it certain prospective uses, a waterfall or something of that kind, but I imagine it had no value.

Q. 15. Do you remember as to who the interpreter was that acted between the commissioners and the Indians?

A. Oh, I think it was—I don't know whether we had more than one interpreter—but I am very sure that Paul Beaulieu was an interpreter there.

Q. 16. Do you remember as to whether or not he did the most of the interpreting between yourselves and the chiefs?

A. Well, if I knew certainly that we had more than one interpreter, then I could infer.

Mr. DAVIS: Mr. Warren, I think, Governor, was there.

A. Oh, was Warren there?

Mr. DAVIS: Yes.

A. Oh, yes. Those names have so disappeared; not William Warren. What was Warren's first name?

Mr. DAVIS: I can't say. His name is signed to the treaty as one of the interpreters. That is the reason I spoke of it.

A. Yes; it is strange I can't hit upon his name. William was the older brother. He probably either had deceased then or did shortly after, but I don't think he was on the treaty ground. I forget his name, but I think Warren was there. I could not tell you which did most of the work.

105 Q. 17. You know Mr. Joseph A. Wheelock ?

A. I do, sir.

Q. 18. What position, if any, did he occupy in relation to your commission ?

A. I believe he was the secretary of the commission, appointed by us—by we commissioners.

Q. 19. And do you remember what duties he performed in connection with the negotiations ?

A. None but those that would appropriately belong to the secretary of a commission—taking notes and reducing to writing whatever was of such importance as should be preserved—that we thought should be preserved, of course, under our general direction. Then I think when we were through he summed up the substance of the negotiations and transmitted them to Washington. That is my best recollection. That is what he naturally would have done and my recollection about it. Of course, the treaty itself we transmitted, I suppose.

Mr. DAVIS: I have no questions to ask the Governor.

Mr. RHINEHART: I offer in evidence the report of the Hon. Alexander Ramsey to William P. Dole, Commissioner of Indian Affairs, Washington, D. C., dated St. Paul, Minnesota, October, 1863, contained in the report of the Commissioner of Indian Affairs to the Secretary of the Interior and published in volume 3 of the Executive Documents of the House of Representatives for the First Session of the Thirty-eighth Congress, for 1863 and 1864. It is No. 6 of the appendix to the Report of the Commissioner of Indian Affairs and is on page 447 of this book.

Mr. DAVIS: It is objected to as incompetent, irrelevant, and immaterial.

Mr. RHINEHART: I also offer the original lease in evidence.

Mr. DAVIS: That is objected to as incompetent, irrelevant and immaterial, and on the ground that it does not appear to have been approved by the proper authorities of the General Government nor in any way promulgated, ratified, or confirmed.

The original lease was marked Complainants' Ex. C.

Whereupon ORVILLE RHINEHART, a witness produced on behalf of the complainants, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows:

During the month of April, 1895, I visited the office of the Commissioner of Indian Affairs, in the Department of the Interior, in the city of Washington. In the files and archives of the office I found what purported to be a report of the commissioners concerning the negotiations of the treaty of October 2nd, 1863, with the Red Lake and Pembina bands of Chippewa Indians, and attached to that what purported to be a journal of the proceedings connected with the negotiation of that treaty. The report and the journal were in the same handwriting and were filed together and bore an endorsement, "Chippewa R. 204. Received November 20th, 1863," among other endorsements. I made a copy of a portion of the re-

port and of a portion of the journal, and that which I now offer was compared by me with the original report and journal on file in the office of the Commissioner of Indian Affairs and is a true copy of those portions. The documents themselves comprise, as I remember, about 150 sheets of legal-cap paper.

I offer in evidence a portion of that report from page 1, line 1, from the words "St. Paul" to and including the words "connected therewith," line 11; on page 5, line 17, from the words "Accordingly on Wednesday" to and including the words "annexed journal," line 21; on page 21, line 5, from the words "A reference to the" to and including the words "several chiefs," line 7, page 22, and the words "Very respectfully yours, Alexander Ramsey."

I will hand the examiner a copy of that, which is a true copy, and I offer in evidence also the endorsement, "Received at the Indian Bureau November 20th, 1863."

MR. DAVIS: I object to the offer as incompetent, irrelevant and immaterial, and it is only a portion of the report.

MR. RHINEHART: I also offer in evidence from the Journal, page 1, line 1, from the word "Journal" to and including the words "A. C. Morrill," line 7; on page 24, line 11, from the words "We were fortunate" to and including the words "different an idiom," line 17; on page 70, line 9, from the words "It here should" to and including the words "anxious for a treaty," line 13; on page 72, line 18, from the words "Moose Dung resumed" to and including the words "through the country," page 73, line 19; on page 74, line 1, from the words "Little Rock" to and including the words "our chiefs," page 74, line 12; on page 75, line 20, from the words "Moose Dung" to and including the words "if he wants it," page 76, line 18; on page 87, line 1, from the words "Moose Dung" to and including the word "thereafter," line 16; on page 87, line 28, from the words "At the end of a session" to and including the words "make his appearance," page 88, line 11; and the endorsement from the words "Chippewa R. 204" to the words "Transmitted to Secretary of the Interior January 5, 1865. Commissioners."

I wrote and addressed a letter to the department asking for these copies and received a certified copy of them. I offer in connection with the copy a certified copy of my letter asking for those portions of the record, and, in addition to the certified copy, I offer on page 69 from the words "Moose Dung's speech" to and including the words "what would make us comfortable," on said page, in addition to that which is certified. The language here that I have marked, I wish to introduce that much of it. I have compared it with the original and it is a true copy. Taking this that I have given you—all of those pages and lines—I offer this as being a compared and true copy and as corresponding with those lines and words, which is shown by this certified copy of a portion of the record.

I will say that this certified copy and this part on page 69 contains all of the reference to Moose Dung or any transactions had with Moose Dung at that time, so far as I was able to see from the reading of the report and the journal. I found no other reference

to Moose Dung or to the land in controversy here in this action—this lot one in this section that was allotted to him—excepting what is contained in these portions of the record that I offer. Here is the letter and the certified copy. I swear that the copy is an examined copy and offer that and offer the certificate of the Commissioner of Indian Affairs annexed to it also; and I also offer this that is marked in pencil as an examined copy.

Mr. DAVIS: The offers are objected to as incompetent, irrelevant, and immaterial.

The certified copy of the letter referred to was marked Complainants' Exhibit D.

The certified copy of the report and journal was marked Complainants' Exhibit E.

The examined copy was marked Complainants' Exhibit F.

The complainants here rest.

STATE OF MINNESOTA, }
County of Hennepin, } ^{ss}:

I, Richard A. Mabey, a notary public in and for the county of Hennepin, in the State aforesaid, do hereby certify that the foregoing depositions of Patrick Meehan, James Meehan, John George Morrison, May-dwa-gun-on-ind, Leading Feather, Pierre Bottineau, Roderic McKenzie, Michael Burns, John Peterson, William G. Porter, Thomas Wilie, James Meehan, Jr., Albert Wickstrom, Paul H. Beaulieu, Clement A. H. Beaulieu, Robert Fairbanks, Joseph A. Wheelock, Alexander Ramsey, and Orville Rhinehart were taken before me at the times and in the places therein specified by agreement of counsel for the respective parties to this action; that the complainants in said cause were personally present at the taking of the same, together with their counsel, J. C. Judge, Esq., and Orville Rhinehart, Esq., and defendants by their counsel, James A. Kellogg, Esq., and Frank F. Davis, Esq., as therein appears; that before deposing the said witnesses were by me personally sworn to tell the truth, the whole truth, and nothing but the truth in the cause now pending in the United States circuit court for the district of Minnesota, in the fourth division thereof, wherein Patrick Meehan and James W. Meehan are complainants and Ray W. Jones is defendant; that said depositions were taken in shorthand by me and afterwards reduced to writing, and the signing of the same by the respective witnesses, as well as the reading thereof by the said witnesses, was waived by consent of the respective counsel.

It was stipulated by and between the counsel for the complainants and the defendant that the testimony of the several witnesses should be taken in shorthand by the examiner and afterwards reduced to writing, and that the depositions should have the same force and effect as though each and every deposition had been read over by the said witnesses and afterwards signed by them.

And I do further certify that I am neither attorney nor counsel for any of the parties in said depositions or caption named and am in nowise interested in the result of said cause.

In testimony whereof I have hereunto set my hand and notarial seal this 18th day of June, A. D. 1895.

RICHARD A. MABEY,

Special Examiner, Notary Public, Hennepin County, Minnesota.

Title of Cause.

Deposition of Patrick Meehan, taken on behalf of the complainants at the office of the clerk of the United States circuit court, Minneapolis, Minnesota, on Thursday, July 15, 1895, before
108 Richard A. Mabey, special examiner in this cause, pursuant to a stipulation and order of court on file herein.

Present: On behalf of the complainants, Orville Rhinehart, Esq.; on behalf of the respondent, James A. Kellogg, Esq.

Thereupon the following proceedings were had, to wit:

PATRICK MEEHAN, a witness recalled on behalf of the complainants, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Rhinehart:

MR. RHINEHART: Notice of the taking of testimony in rebuttal in this cause having been given for Saturday, the 10th day of August, 1895; and hearing having been deferred by the examiner at the request of the defendant's solicitor, it is hereby mutually stipulated and agreed that the testimony introduced by complainants on this day is received with the same force and effect as though taken on the 10th day of August, 1895. Is that satisfactory, Mr. Kellogg?

MR. KELLOGG: Yes; that is all right; the defendant consents.

Q. 1. Mr. Meehan, Mr. Jones in his testimony given in this cause states that in the month of September, 1894, at the Ogamah hotel, in Thief River Falls, he had a conversation with you relative to the matters in controversy, and that in response to a question of his or in said conversation you said to him: "Mr. Jones, your ideas are thoroughly practical and such an arrangement can be made, but the people in this town have got it in for me, and I propose to fight you as long as I have any money left." Mr. Kellogg, in his testimony given on behalf of the defendant in this cause, states that he had a conversation with you in September, 1894, at this time and place, at which conversation Mr. Jones, Mr. Kellogg, and yourself participated, and that you said to him if Mr. Jones succeeded in the approval of his lease before the department you would agree to it without any difficulty, and they would have no trouble. I will ask you which one of these statements is true, if either.

A. I don't think either of them. I never had agreed with Mr. Jones—Mr. Jones had never made no program of his improving the river before me in his life; never talked of how he would improve it, and I don't believe he knows anything about how he could improve it, because he hadn't looked the river up any distance.

Q. 2. Did you have a conversation with these parties at that time?

A. Yes, sir.

Q. 3. What did they ask you or either of them in that conversation?

A. Mr. Kellogg asked me if the matter could not be settled.

Q. 4. What answer did you make to that?

A. I told him I thought not, and we walked down to the river and down to about where the building is built now, but did not go up the river. We walked down to a point where there is a small house built on some piling and stood there, and I showed him there that it was practical to divide the river in three divisions, which would leave nobody any room; and in that conversation he wanted to know if the matter couldn't be settled, and I asked him
109 how he would want to settle it—for me to give up my lease of shore rights—and he said it would be practically that, and I told him I would not consent to anything of the kind. I refused positively to give up my rights there.

Q. 5. Was the fact that you had any shore rights mentioned in the conversation between Mr. Jones and Mr. Kellogg?

A. Yes, sir; he knew I had a lease of the land at the time and talked about it and asked me to give up my lease. He said it would be practical if I gave away the shore rights of the river to them, and I told them I would not consent to anything of the kind.

Q. 6. That was about the time of the commencement of this case?

A. Yes, sir; and as to Mr. Jones ever laying any program before me or talking about improving the river so we could run two mills in there, he spoke about milling there and I told him there wasn't room for two mills, but if he wanted to buy my property I would sell out cheap, and after that he wrote to me for a list of my property and the price on it, and I made one out and gave it to him when he went up there with Maxwell and somebody else, and I saw immediately on his reading that that he didn't want my property without his telling me so. I sent and got the schedule that I gave him. He told me a lie; he told me he was going to the lake and he wanted to take it with him, and he didn't go to the lake at all, and I saw by his actions that he wanted my list of property for some other purpose, so I sent my nephew and told him I wanted him to return it to me.

Q. 7. That is all the negotiations you ever had with him?

A. Yes, sir. I was satisfied then he was trying to play me some other trick, because he didn't want to buy my property when he requested me to get a price on it. I told Mr. Jones there wasn't any room for two mills there and I would readily sell him my property at a cheap price than to have two mills located there.

Cross-examination.

By Mr. KELLOGG:

X Q. 1. Mr. Meehan, you recollect of having a conversation about the division of the pond room on the water with Mr. Jones and myself at either the Ogamah or Great Northern hotel?

A. I never had any conversation at either of the hotels in relation to a division of the pond. You talked to me a little right in front of Knox's door, on the sidewalk or crossing; you and Jones; that is the only place you and Jones ever talked with me.

X Q. 2. That was about the dividing of the pond?

A. Yes; about that. I wouldn't consent to anything. You know I never consented in any way, shape, or form to allowing any mill in there, because I always held there wasn't room.

X Q. 3. You and I walked down to the river?

A. Yes.

X Q. 4. And talked about it there?

A. Talked some about it; we didn't stay long.

X Q. 5. Don't you remember that we went up to the point between Thief river and Red Lake river?

A. No, sir; we never went up that far.

X Q. 6. But we were on the bank of the river in question?

110 A. You were on the bank of the river where that little house is, where we built that house; that is where we went to.

X Q. 7. Well, that is on the land in question, and we had there a view of the pond?

A. Yes; we was on the land, on fraction one, and also adjoining my shore rights.

X Q. 8. That would be right in view of the water?

A. Oh, yes; we were in view of the water, certainly.

X Q. 9. We could see the whole—

A. No; you couldn't see the whole of the river.

X Q. 10. We could see clear up to where the Red Lake river turns?

A. No; you couldn't, not from that point, sir. The river is quite crooked and you can't see from that point to the fork of the river.

X Q. 11. That was in the afternoon?

A. I think it was. I couldn't state as to whether it was in the forenoon or afternoon. I think it was in the afternoon. I don't know what time of day it was.

JAMES A. KELLOGG, a witness recalled in behalf of the complainants, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, testified as follows in answer to interrogatories propounded to him by Mr. Rhinehart:

Q. 1. You have testified, I believe, already in your testimony in behalf of the defendant that you remember the circumstances of what is called the Murchison investigation?

A. Yes, sir.

Q. 2. Did you know Kenneth S. Murchison in the month of September, 1894?

A. Yes, sir.

Q. 3. Did you meet him at Thief River Falls at the time he was there making the investigation into the Moose Dung leases and matters pertaining to that?

A. Yes, sir; I was there.

Q. 4. Now, at that time—you have seen a copy, I believe you said, after it was filed in the department or in the office of the Commissioner of Indian Affairs; you have seen the report Mr. Murchison made concerning his investigation up there?

A. Yes, sir.

Q. 6. Now, Mr. Murchison states in his report, Mr. Kellogg, that he had a conversation with you at Thief River Falls at or about the time of this investigation, in which the matter of these other heirs was mentioned and in which you told Mr. Murchison that you had been told that these women, referring to these other heirs, were not Moose Dung's sisters, as we reckon them, but are his cousins in fact, which is reckoned by the Indians as sisters. Do you remember having such a conversation with him?

A. I do not remember, but it is possible I had such a conversation.

Q. 7. And in which you also said that you had also been just as reliably informed that they were old Moose Dung's daughters and sisters of the present Moose Dung. Do you remember having made that statement?

111 A. I don't remember of making it at Thief River Falls.

Q. 8. Well, at any time?

A. If you would refer to the time and place I might recall the conversation.

Q. 9. Well, the conversation was had, according to Mr. Murchison's statement, late Saturday afternoon of what I believe was the 29th of September, 1894, after the investigation was concluded in which the subject came up informally in regard to their being supposed to be other heirs of Moose Dung, which fact had been developed on the investigation.

A. I have testified somewhere in this case, haven't I, on that?

Q. 10. Well, I don't remember what you have testified to. I have not read it all. You will answer that at some time before Mr. Murchison made this report at Washington, October 20, 1894, you did make such a statement to him, but are not positive that it was made at Thief River Falls?

A. Yes, sir.

Q. 11. You think you made such a statement to him either there or Washington before he made his report.

A. I do not remember distinctly of making the statement, but after reading the report I have no doubt that I made that statement to Mr. Murchison.

Q. 12. Because you had been informed in both of those different ways in regard to Moose Dung's relations prior to that time?

A. Yes, sir; I have been informed that Moose Dung had no relations except a son on the Leech Lake reservation, and I had no definite reliable information with regard to the relations of the present Moose Dung.

Q. 13. You say that you saw in Washington about the time that this report was made by Mr. Murchison, about October, 1894, a telegram from Major Allen stating that one Bay-sha-bun-noke was a sister of Moose Dung?

A. My best recollection is it was a telegram which read : " Mon-si-moh has one sister, Bay-sha-bun-poke," but I cannot be positive that that was the name ; that is my best recollection.

Q. 14. That telegram was addressed to whom, do you remember ?

A. The Commissioner of Indian Affairs, I now think.

Q. 15. And was from the agent at White Earth, Major Allen, you state ?

A. Yes, sir ; from Major Allen. It is possible that that telegram was to the chief of the Indian division ; I am not positive which place I saw it.

Q. 16. It might have been Mr. Pollock, and it might have been the Commissioner ?

A. It might have been either place, but my first impression is it was in the Indian Affairs Office I saw that.

Mr. RHINEHART : I wish to introduce in evidence a certain allegation contained in a complaint in an action wherein Ray W. Jones is plaintiff and Patrick Meehan and James Meehan are defendants, in the United States circuit court for the district of Minnesota, sixth division, which complaint was filed in said court on the 15th day of February, 1895, which allegation is as follows : " That thereafter and long prior to the commencement of this action said Indian chief, Moose Dung, died, and his son, Mon-si-moh, commonly called and known as Moose Dung, survived him and is now living and became the sole heir-at-law and successor of the said Moose Dung, deceased, and thereby succeeded to, has ever since held and does now hold all the right, title, interest in and privileges pertaining to said premises as such heir-at-law and successor of the said deceased chief, Moose Dung." I also introduce the certificate of the clerk of said court.

Mr. KELLOGG : You need not introduce that ; it is admitted it is a certified copy.

Mr. RHINEHART : Not offering any other portions of said complaint. It is admitted that the copy is a certified copy, and that that language appears in the complaint.

Mr. KELLOGG : To that I object as incompetent, irrelevant, and immaterial, but I will admit that that occurs in the original complaint on file.

Complainants rest.

(EXHIBITS A, B, AND C.)

Know all men by these presents that I, Moose Dung, of Thief River Falls, Polk county, Minnesota, party of the first part, for and in consideration of the sum of twenty-five dollars, to me in hand paid by Patrick Meehan and James Meehan, of the city of Milwaukee and State of Wisconsin, parties of the second part, the receipt whereof is hereby acknowledged, has bargained and leased and by these presents does demise, grant, bargain, and lease unto the said parties of the second part, their heirs and assigns, for the full term of ten years from date, at an annual rental of twenty-five dol-

lars per annum, to be paid annually on the 30th day of October of each year, the following-described premises, situated in the county of Polk and State of Minnesota, viz: Ten feet wide off the bank of the Red Lake river and Thief river along the water's edge, as the bank is flooded by the certain dam constructed across the said Red Lake river known as the Kretzhmar dam, commencing where the southwest (S. W.) corner of lot one (1), in section thirty-four, township 154, range 43, intersects the Red Lake river; thence north along the west shore of said Red Lake river to Thief river; thence along the westerly shore of Thief river across lots one (1), sec. 34, and four (4), three (3), two (2), and one (1), in Moose Dung's reservation, in township 154, range 43, to a point where the north line of Moose Dung's reservation and the south line of section 21 intersects the Thief river, all of said land being in township 154, range 43, same to be used for storing logs, erecting piers and booms, and maintaining same to the design of the parties of the second part and for their use and purposes and for all purposes connected with lumbering, intending thereby to convey all shore rights for the term of this lease for lumbering purposes; to have and to hold the same unto

113 the said parties of the second part, their heirs and assigns, for the full term of ten years from date hereof, and the said parties of the second part agree at the end of the term of this lease to quietly surrender possession of said premises unto the said first party, his heirs or assigns.

In testimony whereof the said party of the first part has hereunto set his hand and seal this 7th day of November, 1891.

his
MOOSE x DUNG. [SEAL.]
mark

In presence of—

THEO. LA BISSENIERE.
CURTIS B. WELLS.

STATE OF MINNESOTA, } ss:
County of Polk,

On the 7th day of November, 1891, personally appeared before me, a notary public within and for said county, Moose Dung, to me known to be the person described in and who executed the foregoing instrument, and acknowledged he signed it freely.

[NOTARIAL SEAL.]

THEO. LA BISSENIERE,
Notary Public, Polk County, Minnesota.

OFFICE OF REGISTER OF DEEDS,
COUNTY OF POLK, MINNESOTA.

I hereby certify that the within instrument was filed in this office for record on the 10th day of Nov., A. D. 1891, at 8.30 o'clock a. m., and was duly recorded in Book E of Misc., on pages 69 to 70.

JOHN SOCKEN,
Register of Deeds.

(Filed Nov. 10th, 1891, at 8.30 o'clock a. m.)

STATE OF MINNESOTA, }
 County of Polk, } ss.:

I, John Amundson, register of deeds of said county, do hereby certify that I have compared the foregoing paper-writing with the original record now remaining in this office; that the same is a correct transcript therefrom and of the whole of said original records, as the same appears in Book E of Miscellaneous Record, pages 69 and 70.

Given under my hand and official seal this 29th day of December, A. D. 1894.

[OFFICIAL SEAL.]

JOHN AMUNDSON,
Register of Deeds, Polk Co., Minn.

(EXHIBIT D.)

DEPARTMENT OF THE INTERIOR,
 OFFICE OF INDIAN AFFAIRS,
 WASHINGTON, May 8, 1895.

I, Thos. P. Smith, acting Commissioner of Indian Affairs, do hereby certify that the paper hereto attached is a true copy of the original as the same appears on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

[OFFICIAL SEAL.]

THOS. P. SMITH,
Acting Commissioner.

Orville Rinehart,
 Lawyer,

Guaranty Loan building.

MINNEAPOLIS, May 6, 1895.

To the honorable Commissioner of Indian Affairs, Washington, D. C.

SIR: I desire a copy, authenticated under the seal of the
 114 department, of certain extracts from the report of the commissioners appointed to negotiate a treaty with the Red Lake and Pembina bands of Chippewa Indians, and of the journal of the proceedings connected with the negotiations which culminated in the treaty concluded between the United States and said Indians at the Old Crossing of the Red Lake river on the second day of October, 1863, the same being made and kept by said commissioners and by them returned and filed with said report in the office of the Commissioner of Indian Affairs, and the various endorsements thereon, more particularly as follows:

Report: Page 1, line 1, from the words "St. Paul" to and including the words "connected therewith," line 11.

Page 5, line 17, from the words "accordingly on Wednesday" to and including the words "annexed journal," line 21.

Page 21, line 5, from the words "a reference to the" to and including the words "several chiefs," line 7.

Page 22 and the words "Very respectfully, yours," "Alex. Ramsey." (Endorsed:) "Received at the Indian Bureau Nov. 20, 1863," and the words:

Journal: Page 1, line 1, from the word "journal" to and including the words "A. C. Morrill," line 7, page 24. Line 11, from the words "we were fortunate" to and including the words "different an idiom," line 17. Page 70, line 9, from the words "it here should" to and including the words "anxious for a treaty," line 13. Page 72, line 18, from the words "Moose Dung resumed" to and including the words "through the country," page 73, line 19. Page 74, line 1, from the words "Little Rock" to and including the words "our chief," page 74, line 12. Page 75, line 20, from the words "Moose Dung" to and including the words "if he wants it," page 76, line 18. Page 87, line 1, from the words "Moose Dung" to and including the word "thereafter," line 16. Page 87, line 28, from the words "at the end of a session" to and including the words "make his appearance," page 88, line 11.

And the endorsement from the words "Chippewa R. 204" to the words "transmitted to Sec. of Int'r, Jan. 5, 1864. Com'r."

Respectfully,

ORVILLE RINEHART.

(EXHIBIT E.)

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *May 7, 1895.*

I, Thomas P. Smith, acting Commissioner of Indian Affairs, do hereby certify that the paper hereto attached is a true and literal excerpt copy of so much of the report of Alex. Ramsey, dated October, 1863, to the Commissioner of Indian Affairs, and the journal of the proceedings connected with the negotiation of a treaty with the Red Lake and Pembina bands of Chippewas, concluded at the Old Crossing of Red Lake river on the second of October, 1863, as was called for in a letter dated May 6, 1895 (I. O. file-mark 19416, 1895), from Orville Rinehart, of Minneapolis, Minnesota, and taken at random, as requested by him, without regard to the con-
115 text or connected structure, or other matter of said report not appearing in said excerpt copy as the same appears in the files of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

[OFFICIAL SEAL.]

THOS. P. SMITH,
Acting Commissioner.

SAINT PAUL, MINN., *October 18, 1863.*

Hon. William P. Dole, Commissioner of Indian Affairs, Washington, D. C.:

Having in compliance with your instructions succeeded in effecting a treaty with the Red Lake and Pembina bands of Chippewa

Indians for the extinction of their title to the large and important district of country known as the Red River valley, I have the honor to make the following report of the circumstances connected therewith :

* * * * *

"Accordingly on Wednesday, the third day after my arrival, we held our first general council, a report of which, as of all subsequent proceedings, carefully prepared by the secretary of the commission, will be found in the annexed journal."

* * * * *

"A reference to the accompanying journal will more fully explain the position taken by the several chiefs."

* * * * *

Very respectfully, yours, &c.,

ALEX. RAMSEY."

"(Endorsed:) Received at the Indian Bureau Nov. 20, 1863." "Journal of the proceedings connected with the negotiation of a treaty with the Red Lake and Pembina bands of Chippewas, concluded at the Old Crossing of the Red Lake river on the second of October, 1863, by Alex. Ramsey and A. C. Morrill."

* * * * *

"We were fortunate in our interpreter, Mr. Paul Beaulieu, whose thorough acquaintance with the Chippewa language and ready command of English enabled him to give as close and faithful a rendering of the Indian forms of expression and the current of his ideas as is possible in so different an idiom."

* * * * *

"It here should be explained that Moose Dung, who was really the most influential of all the chiefs, stood at the head of a party embracing the large majority of all the bands who were favorable to and even anxious for a treaty." * * *

"MOOSE DUNG resumed: 'My father, I have one word more to say, and these are my own thoughts. My father, it is not for the mention of the goods that I want to speak. It is not for the sake of using good words to get goods—they are not very tempting—nor is it for the purpose of cheating our father, and it is not the lines nor the measure of the land that I now talk about, but to hear you make a more liberal proposition than the others. This makes me feel very thankful. We were very glad to hear you make so
116 good an offer over and above what you offered for the country east of the line we had fixed.' As to the country west, he expected another offer. That was all he had to say to that. 'Now, I want,' he continued, 'to speak of another thing. I do not mention the name of any chief that I see around me. The idea that I had and that I always have is this, and this is the reason that my thoughts run in this way. I have taken the mouth of Thieving river as my inheritance. I do not ask the chiefs here where I shall go. I make my home there. I wanted it for a reservation for myself, but I see you are ahead of me. You want to take these, too. I should have been very much gratified to have had one employee

there to work for me. Whether the old man acts with me on this matter I do not know. I used to think that that was the proper place for me to settle; that it would be an inheritance for my children—where all my children could have enough to live on in the future.”

“Mr. Ramsey explained the reason why he desired to push the line further east to take in the mouth of Thief river. It was in order to cover all the roads through the country.”

* * * * *

“LITTLE ROCK: ‘Now, my friend, I will tell you what we think. It is very pleasant that we show each other our mode of thinking. My friend, I do not speak any more nor take any interest in the business transacted here. I am very glad to meet you here and that you have treated us so well; that you have put aside everything which squeezes me. I was very much pleased that you put that aside at the time my chiefs put that burden upon me. We should gratify all our young men if you should accept our proposition. There is where my chief has stood for fifty years. There is a little in your proposition which we don’t like. I wish you could concede something to our chiefs.’

* * * * *

“MOOSE DUNG: ‘My father, I arise once more. I come here to meet you as a chief. I do not consider myself a chief as high as you are, but I have a right to speak freely. My father, I think when I look upon this land and compare it with other lands that I have a very fine tract, and that the soil is good. It used to be my idea that we should be benefited by this treaty and that you should not go far away unsatisfied. If we could agree on a price, all will be well. I know that I am no liar—no coward—and that there is nothing against me. That is the reason I demand that you should open up your heart a little. I ask for more and beg for more. It had been my intention to ask for the good land about Thieving river that I wanted my children to live upon—one million dollars—in addition to what I have already asked.’

“Mr. RAMSEY: ‘Tell that they can’t expect the patience of their great father to last forever. If they suppose an expedition is to be fitted out at a great cost every year to send commissioners here merely to hear their talk, I am afraid they will be mistaken.’

“MOOSE DUNG: ‘When I spoke just now I merely wanted to state the value I put upon the mouth of Thieving river.’

117 “Mr. RAMSEY: ‘Tell him I don’t care anything about the mouth of Thieving river. He can have it if he wants it.’

* * * * *

“MOOSE DUNG: ‘Father, you have hit my heart in the right spot in speaking of the liquor as you did. That is what I don’t want in my land, because it is the source of trouble and poverty. Father, I accept of the proposition, because I see that I am going to be raised from want to riches—to be raised to the level of the white man. Father, I hope you will do what is right with me and my young men. I have always found that in holding in I sometimes get

more from my traders. You and the Government have used every exertion for a great many years to bring about a treaty. I do not want you to exert yourself in vain. I now give up the tract of country. I hope you will have pity on me and see that these terms are carried out to the letter, so as not to lead to trouble hereafter."

* * * * *

"At the end of a session of three and a half hours' duration Moose Dung, who has stood for an hour weighing and deliberating on every separate provision of this treaty, asking for this explanation and that modification, appearing to labor under a serious sense of the great responsibility he was taking, at last touched the pen which was to affix his vicarious sign-manual to the treaty. He was followed by Broken Arm, and one after another all the chiefs of Red Lake and Pembina came up and touched the pen, except May-dwa-gun-on-ind, who, true to his resolution, did not again make his appearance."

* * * * *

(Endorsement:) "Chippewa R. 204. Hon. Alex. Ramsey. St. Paul, Oct., '63. Treaties, &c. Submits his report having reference to the treaties with the Chippewas of Red Lake & Pembina, with the Chippewas of the Missi.; also enc. treaty with the Red Lake and Pembina Chippewas and map. Rec'd Nov. 20, '63. Ack'd Nov. 25, '63. Treaty and map. Transmitted to Sec. of Int'r Jan. 5, 1864. Com."

EXHIBIT F.

Page 69, Moose Dung's speech.—Moose Dung, who had heretofore remained silent, now arose and said: "My friend, it is not because I am afraid of anything that I never speak when there is a council. I should be very glad to be able to speak and to be heard when there is a council. I don't want to say much of the reasons why I have got up to speak. I sometimes think when I speak to a man of rank that he shall listen to me with pity. My father, is this the last proposition you have to make? Is this all you can give to your children? I wish to see it clearly before my eyes. I wish to know if you cannot change it a little and make it a little nearer what would make us comfortable."

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *January 11, 1895.*

I, S. W. Lemorex, Commissioner of the General Land Office, do hereby certify that the annexed copies of papers relating to "Moose Dung" lands in t'p 154 N., R. 43 W., Minn., are true and literal exemplifications from the papers on file in this office relating thereto.

In testimony whereof I have hereunto subscribed my name and

caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[OFFICIAL SEAL.]

S. W. LAMOREUX,
Commissioner of the General Land Office.

(EXHIBIT G.)

UNITED STATES INDIAN SERVICE,
WHITE EARTH AGENCY,
MINNESOTA, *June 27, 1879.*

Hon. E. A. Hayt, Commissioner of Indian Affairs, Washington, D. C.

SIR: Under treaty stipulations with the Red Lake and Pembina bands of Chippewa Indians, art. 8-A, reserve of 640 acres of land near the mouth of Thief river was given to the Chief "Moose Dung," now deceased, and his only surviving son, Chief "Moo-ko-ke-wai," now requests the said 640 acres officially set aside for his benefit, in accordance with said treaty and before the same has been legally occupied by white settlers. I believe the Government has not yet surveyed the lands in that vicinity, although there is a Frenchman married to an Indian woman living upon the tract claimed by Moose Dung's son. This Frenchman, I am told, is a whisky seller to Indians.

The land he wishes to take is a section on the west side and opposite the mouth of Thief river.

I would respectfully ask your immediate attention to the matter and before the lands mentioned are all taken up by white-settlers.

Very respectfully, your obedient servant,

C. A. RUFFE,
United States Indian Agent.

(Endorsed:) White Earth agency, White Earth, Minn., June 27, 1879. C. A. Ruffe, United States Indian agent. Referring to a certain tract of land near the mouth of Thief river which was given to Chief "Moose Dung," now deceased.

"L." Chippewa R. 448, '79.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *July 25th, 1879.*

C. A. Ruffe, Esq., United States Indian agent, White Earth agency, Becker county, Minn.

SIR: I am in receipt of your letter of the 27th ultimo, wherein you state that Chief Moo-ka-ke-wai, only surviving son of Chief Moose Dung, deceased, requests that a section of six hundred and forty (640) acres of land on the west side and opposite the mouth of Thief river be officially set aside for his benefit, in accordance with the provisions of article 9 of the treaty with the Chippewa Indians of October 2, 1863 (13 U. S. Statutes, page 669), in favor of his father,

Chief Moose Dung, deceased, before the same has been occupied by white settlers; that there is a Frenchman married to an Indian woman now living upon the tract selected, who you are informed is a whisky-seller to the Indians.

Upon inquiry at the General Land Office I am informed that surveys are now being made or about to be made in the locality referred to, and I would suggest that Chief Moo-ka-ke-wai at once locate the land he desires, care being taken that it corresponds with the description in the treaty as being "near the mouth of Thief river," and notify the deputy surveyors and local land officers, as also the surveyor general at St. Paul, thereof, in order that it may be designated on the survey plat as section claimed by Moose Dung's heir under the treaty aforesaid and not open to settlement; also that a description of said land by legal subdivisions, if already surveyed, or, if unsurveyed, identifying it by metes and bounds, in either case accompanying it with a plat of the land, be forwarded to this office for its further consideration and action.

It should also be shown conclusively to the satisfaction of this office that Chief Moose Dung left no other children than the present applicant.

You will at once notify the Frenchman referred to as being on the land to leave, and in the event of his refusing to do so you will proceed to ascertain the fact of his alleged traffic in whisky with the Indians and report the same, with the names of witnesses, to this office.

Very respectfully,

E. A. HAYT,
Commissioner.

(Hindmarsh.)

(Endorsed :) July 25th, 1879. Commissioner of Indian Affairs replies to Agent Ruffee's letter of June 27, 1879, and directs that selections be made by Chief Moose Dung's heirs of land near mouth of Thief river, Minn.

MOUTH OF THIEF RIVER, MINN., *Sept. 10th, 1879.*

Hon. E. A. Hayt, Commissioner of Indian Affairs, Washington, D. C.

SIR: The heirs of Chief "Moose Dung" have selected the following-described lands at the mouth of Thief river, a plat whereof is hereunto attached, to wit: All of fractional section No. 27, all of fractional section No. 34, the east $\frac{1}{2}$ and east $\frac{1}{2}$ of west $\frac{1}{2}$ of section No. 28, the northeast $\frac{1}{4}$ of northeast $\frac{1}{4}$ of section No. 33, or enough thereof to make, with the other descriptions, 640 acres of land, all in township No. 154 north, range 43 west.

I would suggest that immediate action be taken to prevent settlers from occupying these lands, which are the lands selected by the old Chief Moose Dung before his death; have seen and notified the deputy surveyor, who is now on the ground; also notified the United States land office at Crookston and the surveyor general at St. Paul.

Respectfully yours,

C. A. RUFFEE,

United States Indian Agent, White Earth, Minn.

120 (Endorsed :) Mouth of Thief river, Minn., Sept. 10, 1879.
C. A. Ruffee, United States Indian agent.

(Endorsed :) Concerning lands selected by heirs of Chief "Moose Dung," and suggests that action be taken to prevent settlers from occupying the same, etc.

L. Chippewa R. 671, 1879.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, Sept. 26th, 1879.

Hon. A. Bell, acting Secretary of the Interior.

SIR: Article 9 of the treaty with the Chippewa Indians October 2, 1863 (13 Stat., 669), provides as follows:

"Upon the urgent request of the Indians, parties to this treaty, there shall be set apart from the tract hereby ceded a reservation of (640) six hundred and forty acres near the mouth of Thief river for the Chief 'Moose Dung' and a like reservation of (640) six hundred and forty acres for the chief "Red Bear" on the north side of Pembina river."

Under date of June 27th, 1879, United States Indian Agent C. A. Ruffee addressed a letter to this office (copy herewith, enclosure No. 1) referring to the reservation so created in favor of Chief Moose Dung, now deceased, and stating that his only surviving son, Chief Moo-ka-ke-wai, had requested that said 640 acres be officially set aside for his benefit in accordance with said treaty and before the same was legally occupied by white settlers.

By office letter of July 25th, 1879 (copy herewith, enclosure No. 2), Agent Ruffee was instructed that surveys were being made or about to be made in the locality referred to, and that Chief Moo-ka-ke-wai should at once locate the land he desired, care being taken that it corresponded with the description in the treaty as being "near the mouth of Thief river," and notify the deputy surveyor and local land officers, as also the surveyor general at St. Paul, thereof, in order that it might be designated on the survey plat as section claimed by Moose Dung's heirs under the treaty aforesaid and not open to settlement; also that a description of said land by legal subdivisions, if already surveyed, or, if unsurveyed, identifying it by metes and bounds, in either case accompanying it with a plat of the land, be forwarded to this office for its further consideration and action.

Under date of September 10th, 1879, Agent Ruffee writes to this office (copy letter herewith, enclosure No. 8), stating that the heirs of Chief Moose Dung have selected the following-described lands at the mouth of Thief river, a plat whereof is attached, to wit: All of fractional section No. 27, all of fractional section No. 34, the east $\frac{1}{2}$ and east $\frac{1}{2}$ of west $\frac{1}{2}$ of section No. 28, the northeast $\frac{1}{4}$ of northeast $\frac{1}{4}$ of section 33, or enough thereof to make, with the other descriptions, 640 acres of land, all in township No. 154 north, range 43 west, State of Minnesota. He further states that these are the lands selected by the old "Chief Moose Dung" before his death, and that he has

notified the surveyors and local land officers of the selection, as instructed by this office.

121 I have the honor, therefore, to recommend that the selection as made by the heirs of "Moose Dung," deceased, be approved, and that the Commissioner of the General Land Office be directed to take such action as may be necessary to protect the reservation.

I enclose copy of this report.

Very respectfully, your obedient servant,

E. A. HAYT,
Commissioner.

(Hindmarsh, sd.)

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *September 30th, 1879.*

The Commissioner of the General Land Office.

SIR: I transmit herewith for your information a copy of a letter dated the 26th instant, from the Commissioner of Indian Affairs, together with the enclosures therein noted, in relation to a selection of land near the mouth of Thief river, in the State of Minnesota, made by the heirs of "Moose Dung" in accordance with the provisions of article IX of the treaty with the Chippewa Indians of October 2, 1863. (13 Stats., p. 669.)

The following description of the lands will identify the same, namely:

The fractional section 27, fractional section 34, the east $\frac{1}{2}$ and the east $\frac{1}{2}$ of west $\frac{1}{2}$ of section 28, the northeast $\frac{1}{4}$ of northeast $\frac{1}{4}$ of section 33 or enough thereof to make, with the other lands described, 640 acres, all in township No. 154 north, range 43 west, in the State of Minnesota, which lands were selected also by the chief before his death.

In accordance with the recommendation of the Commissioner of Indian Affairs, the said selection has the approval of this department and you will please take the necessary steps for the protection of the said lands so reserved for the benefit of those entitled, as contemplated by the treaty stipulations.

Very respectfully,

A. BELL,
Acting Secretary.

1799, I. O.

Title of Cause.

Depositions of Ray W. Jones and James A. Kellogg, taken on behalf of the defendant, at the office of the clerk of said court, at the city of Minneapolis, on Saturday, the 8th day of June, 1895, before Richard A. Mabey, special examiner in this cause, pursuant to a stipulation and order of court on file herein.

Present on behalf of the complainants, Orville Rhinehart, Esq.; on behalf of the respondent, F. F. Davis, Esq., and James A. Kellogg, Esq.

Thereupon the following proceedings were had, to wit:

It is hereby stipulated and agreed by and between the solicitors for the respective parties that all testimony taken on this hearing

is taken with the same force and effect as though taken after the 15th day of June, and the expiration of the time for taking the complainants' testimony, and with the same force and effect as though under the order and direction of the court fixing the time for taking defendant's testimony.

122 Mr. KELLOGG: The defendant offers in evidence the treaty between the Red Lake and Pembina bands of Chippewa Indians and the United States, concluded at Old Crossing of Red Lake river on the 2nd day of October, 1863, and approved and promulgated on the 30th day of September, 1864.

Received without objection.

Mr. KELLOGG: We next offer in evidence a certified copy of a letter by C. A. Ruffee, United States agent of the Chippewa Indians in the State of Minnesota, dated the 10th day of September, 1879, to the Commissioner of Indian Affairs, at Washington, D. C. and the map and plat annexed thereto, together with the certificate of the Commissioner of Indian Affairs.

Received without objection and marked Defendant's Ex. 1.

Mr. KELLOGG: I next offer a certified copy of a letter of the Department of the Interior, dated Washington, September 30th, 1879, by A. Bell, acting Secretary of the Interior, to the Commissioner of the General Land Office, and also a letter by J. H. Armstrong, acting Commissioner of the General Land Office, to J. H. Stewart, United States surveyor general at St. Paul, Minnesota, dated Washington, October 4th, 1879, together with the certificate of the Commissioner of the General Land Office attached.

Received without objection and marked Defendant's Ex. 2.

Mr. KELLOGG: I next offer in evidence a certified copy of a transcript from volume 8 of the Crookston, Minnesota, Tract Book, together with the certificate of the Commissioner of the General Land Office thereto attached.

Received without objection and marked Defendant's Ex. 3.

Mr. KELLOGG: I next offer in evidence a certified copy of a lease dated the 20th day of July, 1894, by and between Mon-si-moh, commonly called Moose Dung, and Ray W. Jones, the defendant in this case, together with the certificate of acknowledgement thereon, and the approval of the Secretary of the Interior thereto attached, and the acceptance thereof by Ray W. Jones, the defendant, and the acceptance of Mon-si-moh thereon endorsed, together with the certificate of recording in the office of the register of deeds in and for Polk county on the 24th day of January, A. D. 1895; also the certificate of the Commissioner of Indian Affairs thereto attached.

Mr. RHINEHART: I object to the competency, relevancy, and materiality of the documents themselves, the instruments, but not to the form of copy that is introduced in evidence; all objections as to the copy being a certified copy, both as to this lease and the documents thereto attached, and as to the lease under which complain-

ants claim, are mutually waived, the objection going to the body of the instrument in both cases.

The paper was marked Defendant's Ex. 4.

Mr. KELLOGG: I next offer in evidence a certified copy of a joint resolution of the Senate and House of Representatives of the United States of America in Congress assembled, approved on the 4th day of August, A. D. 1894.

123 Mr. RHINEHART: We object to it as incompetent, irrelevant, and immaterial.

Paper marked Defendant's Ex. 5.

Mr. KELLOGG: I next offer in evidence a certified copy of a letter from the Secretary of the Interior, dated Washington, November 13th, 1894, to the Commissioner of Indian Affairs, together with the certificate of the Commissioner of Indian Affairs thereto attached, being Ex. A, attached to the papers in the order to show cause why the writ of injunction *pendente lite* should not be dissolved, and filed by the defendant in this action.

Mr. RHINEHART: Objected to as incompetent, irrelevant, and immaterial.

Marked Defendant's Ex. 6.

Mr. KELLOGG: I next offer in evidence a letter dated December 27th, 1894, by the Secretary of the Interior to the chief of the Indian division of the Department of the Interior, together with the certificate of the Secretary of the Interior thereto attached.

Mr. RHINEHART: Objected to as incompetent, irrelevant, and immaterial.

Marked Defendant's Ex. 7.

Mr. KELLOGG: I next offer in evidence the General Land Office map of the State of Minnesota, issued under the direction of Silas W. Lamereaux, Commissioner of the General Land Office, by Harry King, civil engineer, chief of the drafting division, for the year 1894.

Marked Defendant's Ex. 8.

Mr. KELLOGG: I offer in evidence a certified copy of the articles of incorporation of the Maxwell-Jones Lumber Company, together with the printer's affidavit of publication attached thereto, the notary's certificate of the execution of the same, and the certificate of F. S. Brown, secretary of state, that the same was filed for record in his office on the first day of December, 1894, at 2 o'clock p. m., and was duly recorded in Book L 2 of Corporations on page —, together with a certificate of John Amundson, register of deeds of Polk county, Minnesota, certifying that the same was filed in his office for record on the 3rd day of December, 1894, at 8.20 o'clock a. m., and duly recorded.

Mr. RHINEHART: It is objected to as incompetent, irrelevant, and

immaterial, all objections to the form of copy offered as a certified copy being waived.

Marked Defendant's Ex. 9.

It was admitted by complainant's solicitor that the living Chief Mon-si-moh, commonly called Moose Dung, was the eldest son and successor to all rights of his father under the treaty of October 2nd, 1863, and the son of the Chief Mon-si-moh who signed that treaty.

It is also admitted that lot one, in section 34, lies within the 640 acres set apart by the Government to the present Chief Moose Dung under the treaty stipulation, article 9, treaty of October 2nd, 1863.

RAY W. JONES, a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Davis:

124 Q. 1. Mr. Jones, you are the person who signed this lease as Ray W. Jones, a certified copy of which has been offered in evidence, are you?

A. Yes, sir.

Q. 2. That lease was executed by you as of the date it bears?

A. Yes, sir.

Q. 3. And was presented to you for signature by your attorney, Mr. Kellogg.

A. Yes, sir.

Q. 4. You are the defendant in this case?

A. Yes, sir.

Q. 5. You know the location of Thief River Falls, in Polk county, Minnesota, do you?

A. I do.

Q. 6. And of the land that is in controversy in this action?

A. Yes, sir.

Q. 7. When first, Mr. Jones, in the year 1894, were you at Thief River Falls and upon this land in question?

A. In June, 1894.

Q. 8. Did you at that time go over this ten-foot strip that is described in the pleadings in this case?

A. We went over the site; yes, sir.

Q. 9. State what, if any, buildings, monuments, or erections were upon that land at that time.

A. There was two buildings on the land; one was a small shanty that was used for the repairing of boats, as I understood at that time, and the other was the remains of an old ice-house, abandoned at that time.

Q. 10. Those were the only structures upon the premises?

A. Yes, sir.

Q. 11. Were there any booms upon the land?

A. No, sir.

Q. 12. Logs lying upon the shore?

A. No, sir.

Q. 13. Stakes driven that you observed?

A. No, sir.

Q. 14. Fences erected?

A. No, sir.

Q. 15. New buildings?

A. No, sir.

Q. 16. Piling or piers of any kind?

A. There was some piles driven out in the river.

Q. 17. But upon the shore?

A. No, sir.

Q. 18. No piles or any piers?

A. No, sir.

Q. 19. How far from the bank of the river where the water was at the stage that it was when you were there, were these piles that were driven in the river—that is, just a general estimate?

A. Thirty or forty feet.

125 Q. 20. About how far apart were they?

A. Well, about 100 to 150 feet.

Q. 21. How wide is the river at that point, if you know, opposite this land?

A. About 200 feet.

Q. 22. Do you know the location of complainants' mill?

A. I do.

Q. 23. How far is that below this ten-foot strip of land in controversy?

A. Well, about 1,000 feet, I should judge.

Q. 24. Now, at that time you were looking at this property with the view of making a lease of it and erecting a mill upon it, was that the objective, ultimate object you had in that trip?

A. It was; yes, sir.

Q. 25. And subsequent to that date you did sign this lease that has been mentioned to you and offered in evidence?

A. Yes, subsequent to that.

Q. 26. And up to the time that you signed the lease and obtained the signature of the Indian Mon-si-moh to it, had you any knowledge that the complainants in this case had a lease of that same property?

A. No, sir; I did not.

Q. 27. And was it after the execution of your lease that you learned that fact?

A. Yes, sir; it was in September when I learned of it.

Q. 28. In September, 1894, was it?

A. Yes, sir.

Q. 29. After this lease had been executed by you and the Indian did you go upon these premises with a view of making any improvements?

A. Yes, sir.

Q. 30. When did you do that?

A. The latter part of November.

Q. 31. State, if you will, whether at that time there were any

different structures upon the premises than those which you have mentioned as being there in June.

A. There was not.

Q. 32. What did you do upon the land at that time?

A. We employed a surveyor and we had elevations taken.

Q. 33. What do you mean by elevations?

A. Well, getting the lay of the land so that we could prepare plans for the construction of a saw-mill.

Q. 34. Did you do anything else besides having the elevations made by the surveyor?

A. Yes, sir; we had the river surveyed and the average—or the widths taken at every 100 feet; a station at every 100 feet.

Q. 35. Anything else done upon the land in the way of setting stakes or anything of that kind?

A. Yes, sir; there was iron stakes driven to show where the mill was to be located.

Q. 36. Now, this mill that you speak of was the mill that
126 was contemplated being built by the Maxwell-Jones Lumber Company whose articles of incorporation have been introduced in this case?

A. It was.

Q. 37. State whether or not you were carrying out the purposes of that company for the construction of the mill and location of their plant at Thief River Falls.

A. I was. The largest stockholders were present with me.

Q. 38. Who were they?

A. Thomas Foster, of Muskegon, Michigan, and Edgar G. Maxwell, of Pentwater, Michigan.

Q. 39. I will ask you, in that connection, for what purpose this Maxwell-Jones Lumber Company was organized, and with what end in view.

A. For the manufacture of lumber and carrying on a general lumber business.

Q. 40. Locating the plant in contemplation at what point?

A. Thief River Falls.

Q. 41. Thief River Falls, Minnesota?

A. Yes, sir.

Q. 42. And what you did in the way of improving this reservation, taking elevations, and driving stakes was in carrying out the purpose of locating that plant under these articles of incorporation by that company, was it?

A. Yes, sir.

Q. 43. On this land?

A. Yes, sir; it was the necessary preliminary work.

Q. 44. Do you know a man by the name of Willie living at Thief River Falls?

A. Yes, sir; I have a slight acquaintance with him.

Q. 45. Did you, during the summer of 1894, meet Mr. Willie at Thief River Falls?

A. He introduced himself to me on my first visit in June.

Q. 46. Did you on that occasion go with him down to the river and upon the premises in controversy in this case?

A. I did not.

Q. 47. Or did you on that occasion go with him and have any conversation whatever about the complainants being interested in this property at that time or any other time?

A. No, sir; never.

Q. 48. Now, I will ask whether at that time or at any other time you went with Willie upon the premises in question, looked over the premises with him, and whether on that occasion he stated to you, you suggesting that you thought of making a lease of the premises, that you had better see Meehans about that, as they claimed to have some interest in or lien upon the land, and it would be best to get their permission before you could do it, or anything of that kind.

A. That is utterly untrue. I never had any such conversation with him.

Q. 49. Is it true that you had no conversation with him whatever about the Meehans, their interest in this land or claims upon it?

127 A. I never had any such conversation; no, sir.

Q. 50. Now, I want to ask you, Mr. Jones, if you are familiar with the line of the river, say from the mill of the complainants at Thief River Falls up to the forks of the river a mile or two above—the forks of Thief river with Red Lake river.

A. It is less than a mile.

Q. 51. You are familiar with the line of that stream, are you?

A. I am.

Q. 52. Can you state whether or not the construction of the mill contemplated by you upon the land in controversy, whether the construction of that mill and the necessary booms being put in to take care of the logs to run that mill, would in any way interfere with the operation of the complainants' mill?

Mr. RINEHART: Objected to as incompetent, irrelevant, and immaterial.

A. No, sir. With such improvements both mills could be operated successfully there on that river.

Q. 53. Would it be practicable to so pile and boom the river that both mills could be operated without interference with each other?

Mr. RINEHART: The same objection.

A. Yes, sir.

Q. 54. You may state, Mr. Jones, what your plan of operation was—that is, what your plans were as to the condition of placing the river and the bank so as to operate your mill without interference with theirs.

Mr. RINEHART: Objected to as incompetent, irrelevant, and immaterial.

A. A system of piling, with piers and head-gates for sorting, leaving boomage on each side of the river with a channel between.

Q. 55. I will ask you whether or not you have had any talk with either of the complainants in this case, Patrick Meehan or James Meehan, relative to that plan of taking care of the river so as to operate both mills.

A. I did have such a conversation with Mr. Patrick Meehan.

Q. 56. When was that and where?

A. That was in September, 1894, at the Ogemo hotel, in Thief River Falls.

Q. 57. Did you at that time state to him your plan of putting the river in condition so that both mills could be operated without interfering with each other?

Mr. RINEHART: Objected to as incompetent, irrelevant, and immaterial.

A. I did.

Q. 58. I will ask you whether you stated to him substantially what you have stated to here as to the system.

Mr. RINEHART: The same objection.

A. I did, and also outlined it on a piece of paper.

Q. 59. What answer did he make, if any, to your plan as submitted to him at that time?

A. His answer was, "Mr. Jones, your ideas are thoroughly practical, and such an arrangement can be made, but the people
128 in this town have got it in for me, and I propose to fight you as long as I have any money left."

Q. 60. You may state, Mr. Jones, whether you have paid the moneys called for, or caused them to be paid, in this lease executed between yourself and the Indian Mon-si-moh.

A. I have; yes, sir.

Q. 61. These moneys, as I understand, have been paid by you into the hands of the Indian agent, according to the requirements of and the conditions of the lease?

A. Yes, sir.

Cross-examination.

By Mr. RINEHART:

X Q. 1. This river, Mr. Jones, you say is about 200 feet wide?

A. Yes, sir.

X Q. 2. And your plan of operation, as I understand it, was to remove the piers and pilings that stood in the river at that time, and to erect a line of piling adjacent to the shore of lot one for your purposes, and then another pier or row of piling could be erected adjacent to the opposite shore for Meehans' purposes, leaving an open stream in the center?

A. Yes, sir; that is the idea, with the exception of the piers. There is no piers to move. As to the piers, there is only two, and

they are opposite to the Meehan mill at the lower end of the river, so it would not have been necessary—

X Q. 3. There was piling in front of the lot, wasn't there?

A. Yes, sir; out in the river.

X Q. 4. Well, I mean that—call it piling—and your idea was that piling could be put along the shore adjacent to lot one for your purposes?

A. Yes, sir.

X Q. 5. And that piling could be put along adjacent to the opposite shore for their purposes?

A. Yes, sir.

X Q. 6. Leaving a clear stream in the center for the passage of logs?

A. Yes, sir.

X Q. 7. Down the river?

A. Yes; of about 25 feet.

X Q. 8. At the time that you looked at this and at the time that you were forming these plans, all the piling there was in the river was from 30 to 40 feet out from the shore of lot one?

A. Yes, sir.

X Q. 9. Was there any logs lying between that and the other shore?

A. Not at that time; no, sir.

X Q. 10. Was there any booms strung in there?

A. No, sir; there was only at that time about 100,000 feet of logs in the river, and they were opposite their mill below.

X Q. 11. They were nearer down to the mill.

A. Yes, sir; they were not in front of this land at all.

X Q. 12. How many of these pilings were there opposite the shore of lot one?

A. Well, there might have been ten or twelve.

129 X Q. 13. They were between the shore of lot one and the center of Red Lake river, weren't they, Mr. Jones?

A. Yes, sir.

X Q. 14. And nearer the shore of lot one?

A. Than the center of the river?

X Q. 15. Yes; nearer the shore of lot one than to the shore of the opposite side of the river?

A. Yes, sir.

X Q. 16. At the time that you saw these pilings there did you know what they were in the river for?

A. Yes, sir.

X Q. 17. They were evidently placed there for the purpose of holding booms, and placing logs in the booms?

A. On the opposite; yes, sir.

X Q. 18. Leaving a channel in the river between lot one and the piling?

A. Yes, sir.

X Q. 19. Of 30 or 40 feet?

A. Yes, sir; to allow the steamboat to pass.

X Q. 20. Now, then, in the condition that the river was at that

time, the Meehans, or whoever occupied the other shore and used the boom, could boom logs from the opposite shore out to the piling across the center of the stream and to the piling, could they?

A. They could; yes; if there was no objection to it.

X Q. 21. And the river was evidently piled for that purpose—that is, with that in view, wasn't it?

A. I presume so, although there was no string booms to indicate that that was what it was for.

X Q. 22. But the pilings stood there?

A. The piling stood there; yes, sir.

X Q. 23. At the time that you were entering upon this land, Mr. Jones, were you interested in Thief River Falls or that vicinity in any business?

A. No, sir.

X Q. 24. Other than in this project?

A. No, sir.

X Q. 25. Had you before that time or have you since made any investments there other than those which you have related in your direct examination as incident to the obtaining of this lease and the laying out of this land?

A. I have not; no, sir.

X Q. 26. Do you know where the junction of the Thief river and the Red Lake river is with relation to the north end of lot one?

A. Yes, sir.

X Q. 27. How far is it from that?

A. Five or six hundred feet.

X Q. 28. What part of lot one were the stakes located that you say you drove for the purpose of laying out a mill site?

A. It was in the lower part.

X Q. 29. Lower part?

130 A. Yes, sir.

X Q. 30. Did you have any other shore rights at that time or have you since acquired any other shore rights on the Thief or Red Lake rivers than those appurtenant to lot one?

A. No, sir.

X Q. 31. Do you know how long the shore line is of lot one on the Red Lake river?

A. I can't tell exactly; no, sir; not now.

X Q. 32. Well, approximately, within 100 feet or so, can you tell; estimate it; what would be your best estimate?

A. I should think seven or eight hundred feet.

X Q. 33. About 700 feet?

A. Yes, sir; I should think so; two blocks and over; 300 feet in a block.

X Q. 34. Then if your plans were carried out you would have had a boomage of 700 feet in length for half the width of Red Lake river, less the half of the open space that was to be left in the middle of the river?

A. Yes, sir.

X Q. 35. That would have been about how wide?

A. That would have been about 87 and a half feet.

X Q. 36. Are you acquainted with the size and character of the logs which come down from the Red lake and its tributaries?

A. Yes, sir.

X Q. 37. Which you would have to manufacture at that point?

A. Yes, sir.

X Q. 38. Do you know what the storage capacity of that boomage would have been for those logs; logs of that kind or character?

A. Well, it would depend entirely upon the size of the logs.

X Q. 39. Well, you say you know the general character of the logs as they would average that come down that stream; of those logs what would be the storage capacity?

A. Oh, a half a million or 750,000 feet, perhaps.

X Q. 40. From 500,000 to 750,000 feet. You knew at that time what that storage capacity would be; you figured upon that, didn't you, Mr. Jones?

A. Yes, sir; and also addition boomage.

X Q. 41. What additional boomage did you figure on?

A. We should certainly have attempted to get more boomage than we had there, with every prospect of getting it.

X Q. 42. You knew, didn't you, that the Red Lake river above its junction with the Thief river was upon the Indian reservation?

A. I did.

X Q. 43. And you knew that at that time you could not lawfully maintain any piling or booms in that river, didn't you?

A. At that time we had such information, but we knew that we could get it.

X Q. 44. You knew that at that time, that moment, at that time that you could not do it?

A. At what time?

131 X Q. 45. Well, at the time you obtained the lease you knew it would have been unlawful at that moment, at that time, to have maintained those there, didn't you?

A. My information was such that I knew that I could get more boomage at that time.

X Q. 46. That is, that was a future prospect?

A. Yes, sir.

X Q. 47. But I am speaking of that present time; you knew then that it would have been unlawful to have done it without any further action on the part of the authorities, didn't you?

A. Yes, sir.

X Q. 48. Would a storage capacity of from 500,000 to 750,000 feet have enabled you to have successfully maintained and operated such a plant as you speak of having designs to erect there?

A. We should have made other improvements so that we could have got extra store room to hold more logs.

X Q. 49. Would a capacity of 500,000 to 750,000 feet have enabled you to have successfully operated it?

A. I don't know but what it would; it would depend altogether upon the capacity of the mill and how much lumber you run through it.

X Q. 50. At that time did you or the gentlemen associated with you own any stumpage on the Red Lake river or its tributaries?

A. No, sir.

Mr. KELLOGG: I think this had all better be taken subject to our objection, that it is incompetent, irrelevant, and immaterial.

X Q. 51. You had been in the lumber business prior to your going up there, had you, Mr. Jones?

A. Yes, sir.

X Q. 52. And were you acquainted with the customs and the manner of lumbermen in the construction and operation of piling and booms in rivers where logs are floating?

A. Yes, sir.

X Q. 53. I will ask you whether in taking this lease of lot one you took the lease for the land itself or for the land with the half of the river appurtenant or adjacent to it; what was your object?

A. Had to have the river or it would not have been of any value to me.

X Q. 54. You were looking, then, to your share of the river?

A. Yes, sir.

X Q. 55. And was it your idea or contemplated by you at that time that if you obtained lot one you would be entitled to the boomage in the half of the river?

A. Yes, sir.

Redirect examination.

By Mr. DAVIS:

Q. 1. What field was there behind this river out of which you expected to get your supplies for that mill?

A. I am familiar with the timber tributary to Red lake, of which Red Lake river is an outlet, and I first called my attention to Thief River Falls as a desirable place to locate a mill and manufacture and handle lumber.

Q. 2. Well, was that timber of sufficient quantity and was it open to public purchase to an extent which would enable you to run and operate that mill successfully, as contemplated by you?

A. Yes, sir.

Q. 3. So that while as a matter of fact you did not own any timber lands at the time you located this mill you had a market in which you could purchase logs to manufacture to an unlimited extent?

A. We had over 45 million offered to us at that time that we were ready to close the contract for.

Q. 4. Now, after this lease had been signed by yourself and, as you understood, by Mon-si-moh, did you go forward in the preparation of your plans for this mill which you proposed to locate upon this land?

A. Yes, sir.

Q. 5. And did you cause plans to be made, profiles to be drawn, and the necessary engineering and drafting work done?

A. I did.

Q. 6. Preparatory to its construction?

A. I did, and also contracted for machinery that we were obliged to cancel.

JAMES A. KELLOGG, a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Davis:

Q. 1. Mr. Kellogg, you are familiar with this lease, a certified copy of which has been introduced in evidence, are you?

A. Yes, sir.

Q. 2. Do you know the Indian Mon-si-moh, whose signature purports to be upon that lease?

A. Yes, sir; I saw him sign it.

Q. 3. And the signature which is upon the original of which this is a copy is the signature of that Indian?

A. Yes, sir.

Q. 4. Was that lease interpreted to him at the time he made his signature upon it?

A. Yes, sir.

Q. 5. Or purported to be, and by whom?

A. It was first interpreted to him by Mrs. W. R. Spears. We three spent the most of one afternoon discussing the terms of the lease and the contents of the paper, Moose Dung and myself, Mrs. Spears interpreting between us.

Q. 6. Well, he finally signed the lease, did he?

A. He did.

Q. 7. And it was signed at the time when it bears date as having been signed by him?

A. Yes, sir.

Q. 8. Now, were you present in the city of Washington when a contest occurred or an attempt was made to have this lease
133 confirmed and a contest was made against it by the complainants in this case?

A. Yes, sir.

Q. 9. During the progress of that contest before the department under what lease did the complainants claim?

Mr. RINEHART: Objected to as incompetent, irrelevant, and immaterial.

A. Under a lease taken subsequent to this lease they are now claiming under in this case.

Q. 10. And was there any claim made before the department in reference to this lease under which they are now claiming?

A. There was no claim made under it.

Q. 11. Do you know what action the department took with reference to it, if any?

A. It was on file as evidence in the department and they disapproved it.

Q. 12. At the time of that contest before the Department of the Interior were the complainants represented by counsel?

A. Yes, sir.

Q. 13. And hearings were had before the Commissioner, were there?

A. Yes, sir.

Q. 14. Under which all these leases were spoken of and for the contest of this action, before the Commissioner, was it not—that is, the disapproving of this lease?

Mr. RINEHART: That is objected to as incompetent, irrelevant, and immaterial.

A. The leases were before the Commissioner, and the approval of the Meehan leases was urged by Mr. T. Sommers, an attorney and representative in Congress from the Milwaukee district of Wisconsin.

Q. 15. The only point is as to whether the Government had under its consideration this identical lease under which the complainants are now claiming.

A. Then the complainants were represented in the hearing before the Secretary of the Interior by Mr. Sommers and J. C. Judge, and the whole matter was gone over there, including the two leases of the Meehans.

Q. 16. Mr. Judge was formerly one of the solicitors for the complainants in this case?

A. Yes, sir.

Q. 17. Mr. Kellogg, where was it that this lease was signed under which the defendant claims by Mon-si-moh?

A. At the house of W. R. Spears, at the Red Lake agency.

Q. 18. Did you, at the time this lease was signed by Mon-si-moh, represent Mr. Jones in this transaction?

A. I did.

Q. 19. Were you the sole representative of Mr. Jones as attorney at that time in securing this lease?

A. I was.

Q. 20. At the time this lease was made by Mon-si-moh did
134 you make any inquiry of him through the interpreter as to whether there was any other lease upon these premises?

A. I did.

Q. 21. And what answer was made by him through the interpreter?

A. He said he had never made any other lease of these premises.

Q. 22. At the time this lease was signed by Mon-si-moh or during the time the negotiations were going on between you and him through Mrs. Spears as interpreter, as you have mentioned—

A. Both Mr. and Mrs. Spears.

Q. 23. (Continuing:) State whether either of the complainants were there at Red Lake agency.

A. Yes, sir; James Meehan was there all the time.

Q. 24. Do you know whether he knew what you were endeavoring to obtain?

A. He did.

Q. 25. Did he at that time state to you that he or his brother or both of them combined had any lease or claim upon this land here in question, whatsoever?

A. He did not.

Q. 26. Had you any knowledge at the time that lease was executed by Mon-si-moh that either of the Meehans, the complainants in this case, made any claim to the land by virtue of any lease or contract whatever?

A. I had no such information. On the contrary, I was informed by the farmer or overseer of the Red Lake reservation—

Mr. RINEHART: That is objected to as incompetent, irrelevant, and immaterial, hearsay and secondary evidence.

Q. 27. Yes; we don't want that.

The WITNESS (continuing): —Capt. Lawler, that Meehans' people had applied for a lease and it had been refused.

Q. 28. I will ask you this: You say you had information that Meehans' people had applied for a lease and been refused; do you so state?

A. Yes, sir.

Q. 29. And was that the only information that you had upon the subject of any claim of the Meehans to this land by virtue of any lease or contract?

A. That was all I had.

Q. 30. At the time Mon-si-moh signed that lease and while the negotiations were going on at Red Lake reservation did James Meehan make any objection whatever to the transaction?

A. Not the slightest.

Q. 31. I understand you to state that he did know what you were about there and what you were seeking to obtain?

A. Yes, sir. I had conversations with him and was there two full days.

Q. 32. Did you have such conversations with him as to put him upon knowledge of what you were doing before the lease was signed?

Mr. RINEHART: I object to that as incompetent, irrelevant and immaterial, leading, and calling for a conclusion of the witness.

A. I don't know that anything particular was said regarding the leasing of this particular property.

Q. 33. Well, was there anything said or enough said so that he had some knowledge of what was going on before the lease was executed?

Mr. RINEHART: The same objection.

A. He knew what I was there for.

Q. 34. And you say that he made no objection?

A. He made no objection.

Q. 35. Nor asserted any claim by virtue of any lease which he or his brother or either of them held?

A. None whatever.

Q. 36. Did you see either of the Meehans, the complainants in this case, in September, at Thief River Falls?

A. Yes, sir.

Q. 37. 1894. Were you upon the premises in question at that time?

A. I was.

Q. 38. Which one of the Meehans was that?

A. Patrick.

Q. 39. State whether any conversation occurred between you and him or whether any conversation was had in your presence and in his presence relative to so regulating the river as to be able to operate both the contemplated mills; both the Jones and the Meehan mills.

A. There was.

Q. 40. Who had the conversation?

A. Mr. Jones, the defendant in this case, Mr. Patrick Meehan and myself, at the Ogemo hotel.

Q. 41. At Thief River Falls?

A. At Thief River Falls; and after the conversation was completed there Patrick Meehan and I walked down to and upon the premises in question, along the shore and up to the mouth of Thief river, and I pointed out on the surface of the water the arrangement proposed by Mr. Jones and urged upon Mr. Meehan the adoption of it, and that he discontinue any objection to the approval of the Jones lease and settle the whole matter, and he replied that it could be done without any question.

Q. 42. What could be done?

A. The division of the boomage, and that if Mr. Jones succeeded in the approval of his lease before the department that he would agree to it without any difficulty and they would have no trouble.

Q. 43. On how many occasions were you upon this land in question?

A. I have been on there a number of times.

Q. 44. When first?

A. The first time—

Q. 45. Well, about when?

A. I can give you the exact date. (Referring to memorandum.) On the 18th day of June, 1894.

Q. 46. What improvements were there upon the land at that time, if any?

A. There were no substantial improvements. There was a partly demolished ice-house near the south end.

136 Q. 47. Do you know to whom that belonged or by whom it was constructed?

A. I do, but I forget the gentleman's name.

Q. 48. Well, do you know whether the Meehans were interested in it or not?

A. They had no interest in it whatever.

Q. 49. What other structures, if any, were upon the land?

A. There was a small structure there that was used as a boat-house.

Q. 50. By whom?

A. By Langseth.

Q. 51. And any other structures or improvements upon the land?

A. None whatever.

Q. 52. Were there any booms upon the shore?

A. None.

Q. 53. Any stakes that you noticed stretching ropes from pilings or booms to the shore?

A. None whatever.

Q. 54. How high is the bank at that place above the water?

A. Commencing at the south end, it is but a little above the water, but near the north end it is, I think, about eight to ten feet.

Q. 55. And how long is this ten-foot strip of land; do you know?

A. My impression is it is about 80 rods.

Q. 56. You were upon the land on subsequent occasions, were you?

A. Yes, sir.

Q. 57. And when were those occasions, generally speaking?

A. I was there on the 22d of June, the 22d of September, and two or three days later. I was there twice in the month of August the same year.

Q. 58. Was there any difference in regard to the improvements, stretchers, or general condition of the premises from what it was when you first went upon the land, as you have mentioned, in June?

A. There had been no change in it.

Q. 59. State whether or not you were upon the steamboat on the river at any time.

A. I was.

Q. 60. Did you pass by this land?

A. Yes, sir.

Q. 61. What sort of a boat was that?

A. That was the Viking, a good-sized river steamer.

Q. 62. About how long?

A. In the neighborhood of 100 feet.

Q. 63. And where did you run with reference to the line of pilings put in there by the complainants and the shore of the ten-foot strip?

A. Between the pilings and the shore.

Q. 64. There was then a sufficient stage of water to enable the boat to pass?

A. Yes, sir. I was informed by the captain that it was made especially to allow the boat to go up and down that side of the piling and to keep the logs on the opposite side of the river.

137 Q. 65. Was that the ordinary stage of water at the time you were upon the boat?

A. Yes, sir; about the ordinary stage.

Cross-examination.

By Mr. RINEHART:

X Q. 1. Who is W. R. Spears?

A. He is the Indian trader at Red Lake agency.

X Q. 2. Had you ever had any conversation with him relative to this lease from Moose Dung before you and Moose Dung and Mr. Spears and his wife had these conversations at Red Lake village?

A. No, sir; I had never seen him before.

X Q. 3. Do you know whether or not Mr. Spears was interested in the procuring of this lease in your behalf?

A. He was not.

X Q. 4. You say that this lease was interpreted to Moose Dung, as I understand it?

A. Yes, sir; by both Mr. Spears and Mrs. Spears; by Mr. Spears on two occasions and Mrs. Spears on one.

X Q. 5. And that interpretation was from you on the one side to Moose Dung on the other, they acting between?

A. Yes, sir.

X Q. 6. You spoke the English language?

A. Yes, sir.

X Q. 7. What language did Moose Dung speak?

A. Well, as I understood, the Chippewa; the Indian language.

X Q. 8. Was any of that conversation carried on with Moose Dung in the English language?

A. No.

X Q. 9. Do you understand the Chippewa language?

A. No, sir.

X Q. 10. Did you understand the interpretation that was made by either Mr. Spears or Mrs. Spears to Moose Dung of your statements?

A. I could not put their language into English.

X Q. 11. Did you understand it as spoken to him at that time?

A. I have a general idea of what was being said to him.

X Q. 12. Well, did you understand the Chippewa language?

A. I did not; no.

X Q. 13. Did you understand the responses made by Moose Dung, or the talk made by Moose Dung to the interpreter, and which was interpreted to you before it was interpreted to you?

A. I did some of it; some of it I didn't.

X Q. 14. Then you understood some Chippewa?

A. I had an idea what was passing between them.

X Q. 15. You didn't understand the Chippewa language, though, at any of that time?

A. No, sir; I didn't understand the Chippewa language except a few words.

X Q. 16. So, as a matter of fact, you could not testify, could you, that that conversation was faithfully interpreted in all respects by Mr. and Mrs. Spears?

138 A. I can; yes, sir; it was.

X Q. 17. That you base upon your opinion of the integrity of Mr. and Mrs. Spears?

A. No, sir; on what transpired in my presence; what I observed and was enabled to understand.

X Q. 18. That was in the negotiation of the lease which called for a rental of \$200 a year to be paid to Moose Dung, was it?

A. Yes, sir; the lease as originally written.

X Q. 19. Was James Meehan in the room at the time this conversation took place?

A. No, sir; but he was out on the porch. There was no effort made to have it secret.

X Q. 20. Did he participate in any of the conversation between you and Moose Dung, Spears and his wife at the time of these interpretations?

A. He did not. I saw him in conversation with Mr. Spears.

X Q. 21. But he did not participate in any of that two-sided or three-sided or four-sided conversation, as you might call it, that occurred between you and the interpreters and Moose Dung?

A. No, sir.

X Q. 22. How long did that interview last?

A. With Moose Dung?

X Q. 23. Yes.

A. At intervals during two days at Red Lake, and at intervals during two days at Thief River Falls, before we went to Red Lake.

X Q. 24. Who acted as interpreter at Thief River Falls?

A. I don't know the man's name, but we had two.

X Q. 25. Then you accompanied Moose Dung to the village at Red Lake?

A. Yes, sir; he desired to go there to consult with Mr. Spears and the overseer of the Red Lake agency, Capt. Lawler, before executing the lease.

X Q. 26. Did you have any mutual conversation with Moose Dung in which Capt. Lawler took a part, relative to this lease?

A. I did not.

X Q. 27. You remember the circumstances, do you, Mr. Kellogg, of what is called the Murchison investigation?

A. Yes.

X Q. 28. Was you present at that time?

A. Yes, sir.

X Q. 29. You may state what that was.

A. When I filed the Jones lease in the office of the Commissioner of Indian Affairs, the Meehans, through Pete Sommers, made charges that the lease had been procured by fraud, and that the Indian didn't know what he was signing. These charges were made orally, and the Commissioner ordered an investigation, and Mr. Murchison was detailed by the Secretary of the Interior to go to Thief river and take testimony regarding this lease.

X Q. 30. Did he take testimony at Thief river—Mr. Murchison?

A. He did.

139 X Q. 31. When was that testimony taken?

A. On the 26th of September, 1894, I think was the day.

X Q. 32. Did you appear before Mr. Murchison at that time?

A. Yes, sir.

X Q. 33. Was there any appearance there at that time by either of the complainants?

A. Yes, sir.

X Q. 34. Did you see the affidavits that were filed there by the complainants on that hearing?

A. I saw some of them that were filed at that time, and some that were filed later. I saw them at a later period.

X Q. 35. Don't you know as a matter of fact, Mr. Kellogg, that the lease of the ten-foot strip was spoken of during the Murchison investigation at Thief River Falls?

A. It was not in my presence.

X Q. 36. Do you know that the lease of the ten-foot strip was annexed to certain affidavits that were presented to Mr. Murchison at that time? You know that, don't you?

A. When I went to Washington subsequent to that I found it in the Commissioner of Indian Affairs' office among some other papers; attached to some other papers.

X Q. 37. Among some papers that had been returned there by Mr. Murchison as a result of this investigation?

A. Well, I am not sure how those papers came there.

X Q. 38. They purported to come there in that way, didn't they?

A. That is my best recollection; from what I saw of them that it was my conclusion at the time that they came in that way; but there was no evidence taken in regard to that, of that lease, at the Murchison investigation.

X Q. 39. The papers that were on file, all of the papers, including those that you saw, were afterwards used in the hearing before the Secretary and the Commissioner of Indian Affairs that was had relative to the approval of this lease, weren't they?

A. They were on file and examined and taken into consideration by the Commissioner of Indian Affairs, and afterwards by the Assistant Secretary of the Interior and the Secretary of the Interior in their examination of the matter in controversy between the complainants and the defendant in this case before the department.

X Q. 40. At that time and before the ratification or approval of this lease by the assistant acting Secretary, you knew that this ten-foot lease was attached to and made a part of those affidavits, didn't you, Mr. Kellogg?

A. I did.

X Q. 41. Now, you have stated that you was familiar with Red Lake river in front of this land in controversy?

A. Yes, sir.

X Q. 42. And you first saw that before you obtained the lease from Moose Dung?

A. I did; went upon it to see what evidences, if any, there were of possession, and made inquiry and I learned from Moose
140 Dung and the other parties regarding these structures that I saw on there.

X Q. 43. What led you to make an inquiry in regard to the fact of possession?

A. Well, as a lawyer I know that a person in possession is entitled

to whatever their rights are, whether recorded or unrecorded, and I looked especially to see what rights any person had there before I entered into negotiations for a lease.

X Q. 44. Were you attorney for Mr. Jones at that time?

A. I sent there for the purpose of procuring this lease.

X Q. 45. At that time there was piling driven, as has been detailed by the evidence here, some thirty or forty feet off from the shore of lot one, in the Red Lake river, wasn't there?

A. There was a few piles out a distance of fifty feet from the water's edge in the stream, scattering, disconnected.

X Q. 46. How far did those pilings extend up the river?

A. They extended from about the mouth of Thief river to a point a little below the south end of this land.

X Q. 47. And nearly opposite the mill operated by the complainants?

A. No, sir; six hundred feet this side of the mill.

X Q. 48. They terminated 600 feet this side of their mill?

A. Yes, sir.

X Q. 49. Was there any other mill in operation at Thief River Falls than the mill of the complainants at that time?

A. Yes, sir.

X Q. 50. A saw-mill?

A. Yes, sir.

X Q. 51. Where was that?

A. That was on the opposite side and a little below the complainants' mill.

X Q. 52. Were there any logs in boomage adjacent to this last mill that you speak of?

A. My best recollection is there was a small bunch on that side of the river.

X Q. 53. Were there any logs adjacent to the mill of the complainants?

A. There were, what I would estimate at 100,000 feet as they lay in the water.

X Q. 54. You noticed, didn't you, that these pilings were inside of the center of the river; the center of the stream as regards lot one?

A. No; I think I took them to be about the thread of the stream.

X Q. 55. Measuring from shore to shore, without any relation to the thread of the stream, didn't you notice that they were inside the center of the river itself as it might be surveyed?

A. No, sir; there was some dead trees standing opposite that indicated the natural shore line of the river, and I estimated them to be at about the thread of the stream between the bank of the river on lot one and those dead trees.

X Q. 56. What led you to take especial notice as to the location of this piling?

141 A. Well, I was considering lot one with reference to the location of a mill there, and the piling attracted my attention, and I inquired for what purpose they were there, and who put them there and how they were used.

X Q. 57. Who did you inquire of?

A. I inquired of the captain.

X Q. 58. You inquired of some captain of a boat?

A. On the steamboat Viking, and of Mr. Ware and of Mr. Knox and others. I could give you half a dozen.

X Q. 59. Did any of these people tell you who those piles were driven there by?

A. Yes, sir.

X Q. 60. Who did they tell you they were driven by?

A. The Mr. Meehans.

X Q. 61. You have had considerable experience as an attorney for lumber companies in your practice, haven't you, Mr. Kellogg?

A. Yes, sir.

X Q. 62. And from that experience you are acquainted with the appearance of streams in which pilings are driven and booms are strung to hold logs, are you not?

A. Yes, sir.

X Q. 63. Were these pilings that were driven in this river pilings similar to those that are driven by lumbermen when they contemplate stringing booms?

Mr. DAVIS: That is objected to as incompetent, irrelevant, immaterial, and not proper cross-examination.

A. Yes, sir.

X Q. 64. And from their appearance were evidently driven in the river for that purpose?

Mr. DAVIS: The same objection.

A. Yes, sir.

X Q. 65. Did you inquire of the Messrs. Meehan as to when they had driven the pilings in there?

A. No, sir.

X Q. 66. Or anything about their having driven the pilings before you obtained the lease?

A. Not of them, but I did of other persons, and I was informed that they were driven there for the purpose of keeping their logs on the opposite bank from lot one, and leaving this way open for a steamboat passage.

Mr. DAVIS: You mean by "this way" the space between the line of piling and the bank of lot one?

A. Yes, sir.

X Q. 67. I understood you to say that you made no inquiries of them as to those reasons before you obtained the lease?

A. No, sir; I didn't know any of them at that time.

X Q. 68. Did you seek to find either of the complainants or the persons in charge of the operation of their mill at Thief river before you entered into these negotiations for the lease?

A. No, sir; I had no occasion to see them.

142 X Q. 69. When was the first conversation that you ever had with either of the complainants relative to the mutual occupancy of Red Lake river for boomage purposes?

A. About the 23rd of September, 1894.

X Q. 70. That was about the time of the Murchison investigation?

A. It was during the time that we were there in the Murchison investigation. I got there the night of the 21st, and it was either the day following or the day subsequent to that.

Redirect examination.

Mr. DAVIS:

Q. 1. What was the result of the Murchison investigation?

A. It was found that the Jones lease was procured fairly, openly, and was a proper lease with the exception of the annual rate of rental.

Q. 2. What do you mean by with the exception; you don't mean to say that the rental was procured by fraud?

A. No, sir; but it was a fair lease as to Moose Dung except that they thought we ought to pay more per annum for the land, and make rests of five-year periods, which I suggested myself as being fair to both parties.

Q. 3. Then the result of that investigation was that they found that the charges of fraud made by the complainants were not true?

A. Yes, sir.

Q. 4. And they simply multiplied the lease as made by increasing the rental value?

A. Yes, sir.

Recross-examination.

By Mr. RHINEHART:

X Q. 1. During this Murchison investigation was it not stated that Moose Dung, at the time that he made this lease, was not thoroughly cognizant of the terms and the nature of the lease?

A. No, sir. He stated himself that it was interpreted to him by Mr. and Mrs. Spears as it was then on the investigation interpreted to him, and that he took counsel with Capt. Lawler with regard to it before he signed it.

X Q. 2. Didn't Moose Dung at that time state that Capt. Lawler had told him that the lease was no good, and that he might as well take your \$50 and sign?

A. My best recollection of that statement is that both he and Capt. Lawler stated in the investigation that at the time that Moose Dung applied to him for advice before signing the lease that he had stated to Moose Dung that the lease would not be approved, and that if he got \$50 he would be that much ahead. That would be my best recollection in regard to that.

X Q. 3. Did Moose Dung make any statement relative to that matter?

A. I say both Moose Dung and Lawler stated that, as I recollect it now. I might add that Lawler also stated to me that it would

not be approved for the reason that Meehans' people had applied for one, for a lease of the same premises, and it had been refused.

X Q. 4. And Moose Dung said that he knew of that statement by Mr. Lawler at the time that he made this lease, didn't he?

A. Yes, sir.

X Q. 5. And he stated that he was not satisfied with the terms of the lease, didn't he?

A. No, sir. On the contrary, he stated that he was satisfied with the terms of the lease until he was told by Meehans people, through an interpreter at White Earth, that the Jones lease was for twenty-five years, and then he was dissatisfied.

X Q. 6. This lease was not approved by the Commissioner of Indian Affairs, was it, Mr. Kellogg?

A. No; it was not.

X Q. 7. Do you know what the grounds of disapproval were as stated by the Commissioner?

A. I do.

X Q. 8. Was it not that he considered that Moose Dung was not cognizant of the terms of the lease when made?

A. No, sir; it was not.

X Q. 9. And that he made it for the sole purpose of obtaining \$50, the first payment?

A. No, sir. The Commissioner of Indian Affairs, at the close of the argument by Sommers and myself, stated that he should disapprove both leases—that is, the Jones & Meehan leases—for the reason that they did not come through the usual channel, in that there was no application made to the agent at White Earth and by him forwarded to the department, and directed in my presence one McPherson to write up the letter transmitting the lease and the files in the case to the Secretary of the Interior. During the week Mr. McPherson wrote up the letter that was transmitted, and it was laid before the Commissioner to sign a very short time before he was going to take the train for Illinois, and he signed it without reading it. It was not the letter and did not contain the grounds given to me orally by the Commissioner for disapproving the lease.

X Q. 10. In the presentation of this matter to the Secretary of the Interior did you see the briefs or arguments that were presented on behalf of the Meehans?

A. I saw a brief or argument presented by Judge Montigue, of Crookston.

X Q. 11. Did you hear any of the statements that were made by either Mr. Judge or Mr. Sommers in any of those—

A. Yes, sir.

X Q. 12. Was the ten-foot lease of the Meehans spoken of there at that time?

A. Yes, sir.

X Q. 13. Was it urged as a reason why the Secretary of the Interior should not approve the Jones lease the existence of a prior lease?

A. It was urged as a reason why the department should ap-

prove the lease of the Meehans procured subsequent to the Jones lease as an evidence that they desired in good faith to obtain possession of that land, but not as a reason why they should not approve the Jones lease. I will make an explanation in regard
144 to that matter; that Meehans' people were seeking a lease of
160 acres of the water front of Moose Dung's reservation for milling purposes.

X Q. 14. And it was disapproved?

A. Well, they were notified that it would be useless to present it, and then they sought to get a lease of practically the same premises in the Jones lease, with about an acre additional above, so as to cut out another mill site. That was the lease in controversy before the department in this case.

X Q. 15. At the time that this matter was presented to the Department of the Interior you knew then of the existence of the ten-foot lease of Meehans?

A. No, sir; not at the time it was presented.

X Q. 16. At the time of the argument before the Secretary of the Interior?

A. Yes, sir.

The further taking of testimony in this cause was here adjourned until —.

Title of Cause.

Depositions of Robert W. Allen and Paul H. Beauleau, taken on behalf of the defendant at the office of the United States Indian agent, at the White Earth Indian reservation, Minnesota, on Thursday, the 18th day of July, 1895, before Richard A. Mabey, special examiner in this cause, pursuant to a stipulation and order of court on file herein.

Present: On behalf of the respondent, James A. Kellogg, Esq; no appearance on behalf of the complainants, it being agreed by and between the counsel for the respective parties that the testimony might be taken subject to such objection as complainants' counsel may see fit to interpose.

Thereupon the following proceedings were had, to wit:

ROBERT M. ALLEN, a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Kellogg:

Q. 1. What is your age, Major?

A. I am 50 years old.

Q. 2. And your present occupation?

A. I am United States Indian agent at White Earth agency, Minnesota.

Q. 3. And how long have you been such?

A. Since November 27th, 1893.

Q. 4. You are agent for the Chippewa Indians in Minnesota?

A. Yes, sir.

Q. 5. Do you know the Indian commonly called Moose Dung?

A. Yes, sir.

Q. 6. And how long have you known him?

A. Well, I would say for more than a year. I don't remember just when I first saw him.

Q. 7. State, if you know, what his Indian name is.

A. Well, it is Mon-si-moh; Mays-ko-ko-noy-ay.

Q. 8. You may state whether or not he is known by each of those names.

145 A. Yes, sir; he is.

Q. 9. You may state whether while you have been Indian agent you have been from time to time required to make payment to the Chippewa Indians of Minnesota of the annuities from the Government.

A. Yes, sir.

Q. 10. Do you know of your own knowledge that Moose Dung is carried on the rolls of the Government as a Chippewa Indian and an annuitant?

A. Yes, sir; he is.

Q. 11. State, if you please, whether you have ever paid Moose Dung his annuity from the Government.

A. I have.

Q. 12. Did you see him sign the roll as an annuitant?

A. Well, I saw him touch the pen and make his mark—that is, the receipt that we take he touches the pen.

Q. 13. Can you give the date of that transaction?

A. I think it was the 10th of October, 1894; that is when we paid him at Red Lake.

Q. 14. You may state whether or not that is the only payment you have made since you have been agent in Minnesota.

A. No, sir; I made another payment, but not at Red Lake; I made a payment at Leech Lake and White Earth reservation.

Q. 15. That is the only payment you made personally to Moose Dung?

A. Yes, sir; that is the only payment I made personally to Moose Dung.

Q. 16. State whether or not you have received any money paid by Ray W. Jones as rental for that lease of a portion of Moose Dung reservation at Thief river.

A. Yes, sir; I have. I received \$200.

Q. 17. State what, if anything, you have done with that money.

A. Well, I have paid it to the persons that it has been decided to be the heirs of old Chief Moose Dung.

Q. 18. Which, if any of them, did you pay personally?

A. I paid Mon-si-moh, or Moose Dung, or this name Mays-ko-ko-noy-ay. I paid him personally; he was here.

Q. 19. Did you take a receipt of that payment from him?

A. Yes, sir.

Q. 20. Have you the receipt?

A. Yes, sir.

Q. 21. State whether or not you saw Moose Dung sign it.

A. Yes, sir; I saw him make his mark. It is witnessed.

Q. 22. I show you Exhibit 10, reading as follows: "White Earth, Minnesota, May 25th, 1895. Received of Robert M. Allen, U. S. Indian agent, \$33.33 $\frac{1}{2}$, being my share for two quarters' rental on lands leased to Ray W. Jones. Moose Dung, or Mon-si-moh, his x mark. Witnesses, R. J. Holland and John Beaulieu." Is that a receipt which you took from Moose Dung?

A. Yes.

Q. 23. You may state whether or not at the time you gave him the money specified in the receipt.

146 A. Yes, sir.

Q. 24. You may state what you did with the remainder of the amounts paid.

A. I sent it to Mr. Lawler with directions to pay it to the other first parties whom it had been decided were the legal heirs of old Chief Moose Dung.

Q. 25. You may state whether or not you have in your possession receipts covering disbursements made by Capt. Lawler.

A. Yes, sir; I have all the receipts.

Q. 26. (Witness shown five papers and asked if those are the receipts received by him from Capt. Lawler.)

A. Yes, sir, these are the receipts.

Q. 27. These five papers each show that \$33.33 $\frac{1}{2}$ was paid to each of the following-named persons: Ne-gon-e-bin-ace, Ay-sin-e-wub-eak, Bay-mway-way-bin-ace, O-she-now-ab-sheak, Bay-sha-bun-noke. You may state, if you please, by whose direction and under what authority, if any, you paid these several sums to these persons.

A. Well, by authority of the Indian Office in a letter a copy of which is as follows:

Refer in reply to the following:

Land, 18627, 1895.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, May 4, 1895.

Robert M. Allen, Esq., U. S. Indian agent, White Earth agency, Minn.

SIR: I am in receipt of your letter of March 30, 1895, in obedience to office instructions of February 4, 1895, with which you submit the affidavit of persons claiming heirship in the estate of old Chief Moose Dung and affidavits of chiefs and head men of the tribe in support of the claims of the respective parties, this in order that the department might determine who are the legal heirs of old Chief Moose Dung for the purpose of distributing the proceeds arising from renting a portion of the lands granted him by the treaty of October 2, 1863 (13 Stats., 669), to Ray W. Jones. Based upon the affidavits submitted you state that you have no doubt but that the present Moose Dung or Mon-si-moh, Bay-sha-bun-noke, O-she-now-ab-sheak, Ne-gon-e-bin-ace, Ay-sin-e-wub-eak, and Bay-mway-way

bin-ace are the only living heirs of old Chief Moose Dung, and that they are entitled to share equally in said estate.

In reply I have to advise you that the matter was submitted to the Secretary in office letter of April, in which this office concurred in your conclusions and recommend that the proceeds arising from the Jones lease be equally divided between said parties.

I am now in receipt of a reply thereto from the acting Secretary, dated April 23, 1895, as follows:

"I have considered your communication of the 9th inst. and accompanying affidavits relative to the heirship of the estate granted to old Chief Moose Dung, and concur in your recommendation that the following parties be determined to be the heirs of said chief for the purpose of a lease to Ray W. Jones and the rents arising from lease of land granted to him by the treaty of October 2, 1863 (13 Stats., 669), to be divided among them equally, viz: Mon-si-moh or

147 Moose Dung, Bay-sha-bun-noke, O-she-now-ah-sheak, Ne-gon-e-bin-ace, A-sin-e-wub-eak, and Bay-mway-binace. The papers accompanying your communication are herewith returned."

"Enclosed petition."

You are accordingly directed to distribute the proceeds of the Ray W. Jones lease that are now in your hands, or may come into your hands in the future, in accordance with the decision of the department.

Very respectfully,

THOS. P. SMITH,
Acting Commissioner.

(McPherson), L.

Q. 28. You may say whether or not you furnished to the Indian Office any evidence of the heirship of these several persons to the elder Chief Moese Dung.

A. I did.

Q. 29. State what evidence you furnished.

A. Well, it was affidavits of chiefs and head men at Red Lake who claimed to know these parties.

Q. 30. State whether or not you took those affidavits yourself.

A. No, sir; I didn't take them myself; Capt. Lawler took them; they were taken at Red Lake, I think, by Capt. Lawler.

Q. 31. You may state, if you please, if you know what the condition of an Indian is who sustains a tribal relation.

A. Well, he would be recognized if possessing Indian blood and living among them and sustaining tribal relations.

Q. 32. You may state whether or not you pay to any individuals an annuity who do not sustain tribal relations.

A. No, sir; we do not; we do not pay any one that is not on the rolls, and they are not supposed to be on the rolls unless they sustain tribal relations.

Q. 33. Tell us how these rolls are made up—on what information.

A. Well, they are originally made by the commission. I think they first made up the rolls from what they call a census report.

That is my understanding of the way the roll was first made up, by taking a census of all the Indians.

Q. 34. Do you know when that was?

A. I don't know when it was first made up.

Q. 35. Have you a copy of those rolls in your office?

A. I don't think there is; the commission probably has.

Q. 36. (Witness shown paper marked Census Roll of the Red Lake and Chippewa Indians, Red Lake Reservation, Minnesota, July 8, 1889, and is asked what this paper is.)

A. That is a census roll, the original census roll.

Q. 37. By whom?

A. By the Chippewa commission, Henry M. Rice, Martin Marty, and Joseph B. Whiting, commissioners.

Q. 38. And by them certified as follows: "We hereby certify that the foregoing was submitted to the Indians in open council, and is a correct census of the Chippewa Indians, occupying and belonging to the Red Lake reservation, in the State of Minnesota, at this date. Dated at the Red Lake agency, on the Red Lake reservation, in the State of Minnesota, this 8th day of July, 1889."

A. Yes, sir.

148 Q. 39. In folio 35, opposite No. 524, occurs the name "Mays-ko-ko-moy-ay, chief, widower."

A. Yes, sir.

Q. 40. You may state, if you know, whether this is the same person known as Mon-si-moh, or Moose Dung.

A. Yes, sir.

Q. 41. And if this is the same person to whom you made the payment of the annuities?

A. He is.

Mr. KELLOGG: I will offer in evidence the portions of the original census above mentioned.

Q. 42. You may state, if you please, what relation, if any, Moose Dung sustains to the Red Lake band of Chippewa Indians at the present time.

A. Well, he is recognized as a chief of a band there.

Q. 43. What office, if any, does he perform in that capacity?

A. Well, I don't hardly know what a chief's duties are; he certifies to the correctness of the roll.

Q. 44. On which you pay the annuities?

A. Yes, sir; he is one of the chiefs; he certifies to the correctness of the rolls to whom we pay the annuities.

PAUL H. BEAULIEU, a witness produced in behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Kellogg:

Q. 1. You are the same Beaulieu that was called as a witness by the other party in this case some little time ago?

A. Yes, sir.

Q. 2. You may state whether or not you knew the elder Chief Moose Dung, called Mon-si-moh.

A. I did.

Q. 3. You may state, if you know, when he died.

A. I don't know the year; I can't remember.

Q. 4. Now, you may state whether you know the present Indian known as Chief Moose Dung.

A. I do; I know him.

Q. 5. What is his correct Indian name?

A. Mays-ko-ko-nay-ay.

Q. 6. Under what name is he known other than that?

A. He is known to the Indians only by that name; that means The-one-that-wears-the-red-robos.

Q. 7. Is he known by other than the Indians by any other name?

A. I think not.

Q. 8. By the white folks, I mean.

A. He is not known by that name among the white folks.

Q. 9. What name is he known by?

A. By Moose Dung.

Q. 10. And that, translated into Indian, would mean what?

A. Mon-si-moh; that is what the whites call him, or Moose Dung.

149 Q. 11. You may state whether he is known as much by one name as the other.

A. Either Mon-si-moh or Moose Dung?

Q. 12. Yes.

A. Yes, sir.

Q. 13. How long have you known him?

A. When I first saw him he was about seven or eight months old, at the time when I first knew him.

Q. 14. You may state whether or not he was then with his father and mother.

A. He was with his father and his mother.

Q. 15. What office does he hold in the Indian tribe in which he belongs, if any?

A. Mon-si-moh, he was a chief, hereditary chief, always looked upon as one.

Q. 16. I refer to the present Mon-si-moh.

A. He is a successor of his father, in accordance with the Indian custom, and the duties that devolved upon his father devolve upon him.

Q. 17. You may state, if you please, if you know, what that Indian custom is to which you refer.

A. We have to transact all business done for the tribes; each chief has a band of his own, as is proved by these rolls. He has to look to the tribe in general, but these in particular, these that are under him. Whenever there is any negotiations to be made with the Government, as a hereditary chief, he is supposed to be one member mentioned in that negotiation.

Q. 18. State, if you know, what, if any, power he has to bind the other members of his tribe to any contract made by him.

A. He cannot bind any members of his tribe except in the demand of the Government officials for a criminal case; otherwise he has no power. He can bind them as he is the acknowledged head, but not otherwise he cannot, except in negotiations with the Government.

Q. 19. You may state if you know the following-named persons: Bay-sha-bun-noke, O-she-now-ah-sheak, Ne-gon-e-bin-ace, Ay-sin-e-wb-eak and Bay-mway-bin-ace?

A. Oh, yes; I know them.

Q. 20. Do you know what, if any, relation they are to the elder chief, Moose Dung.

A. There is one of them that is an own sister of his.

Q. 21. Of the elder chief?

A. Oh, no; they are the children of the elder chief, old Mon-simoh.

Q. 22. State, if you know, how many of them are children of the Moose Dung, deceased.

A. Three.

Q. 23. Name them, please.

A. Mays-ko-ko-noy-ay is one—well, I know that there is just three of them. I can't remember their names now. Bay-sha-bun-noke is an own sister of the present Moose Dung. O-she-now-ah-sheak is a half sister—the same father but not the same mother.

Q. 24. What relation is she to the present Moose Dung?

150 A. Half sister.

Q. 25. The next one?

A. Ne-gon-e-bin-ace; that was the brother that was killed by the Sioux. Na-zho-din was the name of the father.

Q. 26. What relation was Na-zho-din to the present Moose Dung?

A. Brother.

Q. 27. Now the next one?

A. Ay-sin-e-wub-eak; that is a niece of Moose Dung's by his own sister that died.

Q. 28. The next one?

A. Bay-mway-bin-ace; that is a nephew of Moose Dung. The mother is dead, too. She was his own sister's only child.

Q. 29. That was the sister of Moose Dung?

A. Yes, sir.

Q. 30. Which sister left a child?

A. Yes, sir.

Q. 31. An only child?

A. Yes, sir.

Q. 32. One brother that left one child, an only child?

A. Yes, sir.

Q. 33. Did you know the elder Moose Dung's family, old Moose Dung?

A. I have seen the women, sir, but twice.

Q. 34. State whether you were ever in his family.

A. In which way, sir?

Q. 35. The old Moose Dung's family, the present chief's father's family?

A. Oh, yes, sir; many times.

Q. 36. How long were you there?

A. Well, I couldn't tell very well, but every time that I paid a visit to Red Lake I visited them.

Q. 37. I understood you lived with the family?

A. No, sir; I was educated by the old gentleman, but I never lived with them personally. I was an employee and visited them whenever I was there.

Q. 38. You may state whether or not these were all the children of the elder Moose Dung?

A. To my knowledge, I believe, sir. I don't remember any more.

Q. 39. State what, if any, duties you performed on the Red Lake reservation.

A. I was the acting interpreter and in charge of the roll, pay-rolls, and noted the deaths and births.

Q. 40. When was that?

A. I have been since 1863 to a time two years ago. I had charge of those rolls.

The further taking of testimony in this case was here adjourned until July 19th, at 2 p. m., at Thief River Falls, Minn.

Title of Cause.

Deposition of Charles J. Knox, taken on behalf of the respondent, at Thief River Falls, Minnesota, on the 19th day of July, 1895,
151 at the office of Charles J. Knox, before Richard A. Mabey, special examiner in this cause, pursuant to a stipulation and order of court on file herein.

Present: On behalf of the respondent, James A. Kellogg, Esq., and on behalf of the complainant, H. W. Lee, Esq.; whereupon the following proceedings were had, to wit:

CHARLES J. KNOX, a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Kellogg:

Q. 1. Where is your residence, Mr. Knox?

Mr. LEE: Just note that I appear here and object to the taking of testimony in the absence of the attorney of record. Also that there is no evidence here before the examiner that notice has been given of the taking of this testimony and of the time and place.

A. Thief River Falls, Minnesota.

Q. 2. How long have you resided here?

A. Since October 14, 1891.

Q. 3. What is your occupation?

A. Real estate.

Q. 4. Do you know the premises lot 1, in section 34, referred to in the complaint in this case?

A. Yes, sir.

Q. 5. How long have you been familiar with this location?

A. Ever since my arrival here, over three years ago.

Q. 6. Were you on those premises during the year 1894 and prior to June 20th?

A. Yes, sir.

Q. 7. How frequently?

A. Oh, I was on there very frequently. I don't suppose a week passed but what I would be on there; perhaps several times a week.

Q. 8. You may state whether or not you were along the river bank.

A. Yes, sir.

Q. 9. On those premises? State what, if anything, was upon the land along the water's edge, within a limit of 10 feet from the water's edge, prior to June 20th, 1894.

A. June 20th or July 20th?

Q. 10. July 20th, if I said June 20th before.

A. I had a small boat-house there; the end of it might possibly come on the ten-foot strip and Jim Bowers had an ice-house; perhaps a part of it might have been on the strip. I wouldn't be absolutely sure whether it was on the ten-foot strip or not, but it was close to the line and that is all.

Q. 11. What, if anything else, was on lot 1?

A. Well, Pete Eberhart had a sort of repair shop that was located back on the lot.

Q. 12. Is that all?

A. That is all. You have reference to their line along lot 1?

Q. 13. Yes, sir.

A. That is all.

Q. 14. You may state whether or not there were any stakes or poles within ten feet from the water's edge along there.

A. For how long a period?

Q. 15. On the land prior to July 20th, 1894.

A. Well, how far back? Just as far back as I can —

Q. 16. Yes, sir.

A. Driven in the soil, do you mean?

Q. 17. Yes, or lying on the land.

A. No, sir; there were not.

Q. 18. State, if you know, whether there was anything upon lot 1 other than the things that you have mentioned to indicate that any person was in possession prior to July 20th, 1894.

A. There was nothing.

Q. 19. You may state whether or not during the month of July, 1894, you went with Moose Dung and myself to Red lake.

A. I did.

Q. 20. From Thief river?

A. I did.

Q. 21. Can you state when that was?

A. We started from here about noon, Tuesday, the 16th of July, 1894.

Q. 22. By what conveyance?

A. Team and buggy.

Q. 23. Did you know at that time one James Dean?

A. Yes, sir.

Mr. LEE: I object to this evidence as immaterial and incompetent and move to strike it out—that is, all relating to the going to Red lake.

Q. 24. State whether or not during the journey from Thief river to Red lake you saw said Dean.

A. Wednesday afternoon, as we were about ten miles from the lake, he overtook us.

Mr. LEE: That is also objected to for the same reason.

Q. 25. In what manner was he traveling?

A. He was afoot.

Q. 26. State, if you know, how he progressed from that point to Red Lake agency.

Mr. LEE: Objected to for the same reason.

A. He got in the buggy with us.

Q. 27. Did you at that time know one James Meehan, Senior?

A. Yes, sir.

Q. 28. How long had you been acquainted with him?

A. A little over three years.

Q. 29. You may state when and where, if at all, you saw James Meehan at that time.

Mr. LEE: I would like Mr. Meehan to be present, if you are talking about him. I would like to interpose an objection.

Mr. KELLOGG: I don't care about that, Mr. Lee. You may interpose your objection all you want to. That is a matter for the court.

Mr. LEE: I object to this testimony being taken at this place, for the reason that we have had no notice whatever of the taking
153 of testimony at this place, and I ask for its continuance for fifteen minutes until I can obtain Mr. James Meehan, who is in the village, as the testimony relates to him and probably relates to conversations with him.

A. I saw him at Red Lake agency Thursday night after supper, shortly after supper.

Q. 30. At whose house, if any one's?

A. At William Speer's hotel or house, whatever you call it.

Q. 31. State whether or not Moose Dung was there at that time.

A. He was stopping at the same place, and was there.

Q. 32. How long did they each remain there?

A. They were both there when we left the agency Saturday morning, Saturday forenoon following.

Q. 33. You may state, if you know, whether or not James Meehan, Sr., was there during all the time that Moose Dung and myself were there, after he arrived.

A. I got there—yourself and Moose Dung and I got there about noon, I should say, Thursday, and Mr. Meehan arrived there after supper on the same day and remained there all the time we were there.

Q. 34. The James Meehan referred to here, you may please state whether or not he is one of the complainants in this case.

A. He is.

Q. 35. You may state what, if anything, you know regarding the complainants' having built a shanty and some fence on this lot 1, section 34.

A. About the 14th or 15th of December, 1894, they started the erection of a little shanty and strung a wire fence along the bank and drove three or four piling about the shanty.

Q. 36. What, if any, conversation did you have with them at that time regarding the same?

A. They had just started building the shanty when I received word from R. W. Jones to warn them that they were trespassing upon his property, and I went down there and so informed them.

Q. 37. What, if any, reply did they make?

A. Well, the only reply was made by Pat.; he caught me by the arm and shoved me out on the ice a little and says: "I have a notion to smash your damned chop for you." That is all. I also told him at the time that Mr. Jones claimed that property, and that he had instructed me to so notify them and warn them that they were trespassing on his property. Mr. — was with me at the time.

Q. 38. What progress had they made in the construction of the shanty or fence?

A. The shanty was not enclosed, and they had some of the posts up; the wire was not yet strung.

Q. 39. You may say whether or not during the time that Moose Dung, myself, yourself, and James Meehan, one of the complainants, were present at Speer's, at the Red Lake agency, said Meehan said anything in your presence and hearing regarding their lease or so-called lease of the ten-foot strip.

A. Not a word.

Mr. LEE: I will object to that as leading, and move to have it stricken out as suggesting the answer which is desired.

154 Cross examination.

By Mr. LEE:

X Q. 1. What interest, Mr. Knox, have you in this controversy between Ray W. Jones and P. and J. Meehan?

Mr. KELLOGG: To that I object as immaterial and not cross-examination.

A. Only the interest of a citizen of Thief River Falls in getting another enterprise in the place.

X Q. 2. Are you paid by Ray W. Jones or any other person for the interest you take in the matter?

A. No, sir.

Mr. KELLOGG: The same objection.

X Q. 3. Did you go over to White Earth to pay money supposed to be rent for these premises?

A. You have been to White Earth yourself and paid money.

X Q. 4. Who paid your expenses for that trip?

A. The first trip I went for Mr. Jones; he gave me the money. The next trip, I guess, I paid myself.

X Q. 5. Then you have received compensation for your services rendered in this controversy, have you?

A. No, sir; I have not.

X Q. 6. Are your services gratuitous?

A. It has been so far; yes, sir.

X Q. 7. Do you expect pay from any person?

A. I do not.

X Q. 8. Then you want it to be understood that your trip to White Earth once or twice was made at your own expense and with your own money?

A. Partly.

X Q. 9. What do you mean by "partly"?

A. I paid some of my money, and some money was paid that was furnished me by the Business Men's Union, and Mr. Jones gave me some money once to go.

X Q. 10. Who paid your expenses to Red Lake at the time you testified to as going there with Mr. Kellogg?

A. I paid my own expenses.

X Q. 11. Were you paid by any person to go upon the land and notify P. and J. Meehan?

A. I was not.

X Q. 12. That Jones claimed the property as his?

A. No, sir.

X Q. 13. You have taken considerable interest, have you not, in this controversy?

A. Yes, sir.

X Q. 14. Still taking an interest in it?

A. Yes, sir.

X Q. 15. How much money have you spent in that behalf, of yours or any other person's money, for these expenses that you have incurred in this matter?

Mr. KELLOGG: Objected to as incompetent, immaterial, and irrelevant; not proper cross-examination.

A. I couldn't tell.

X Q. 16. Well, about how much, Mr. Knox?

A. I couldn't tell you.

X Q. 17. Are you willing to make any statement of how much you have expended?

A. No, sir; because I don't know just how much.

X Q. 18. Have you kept any account of the expenses that you have incurred in this matter?

A. No, sir.

X Q. 19. How are you able to fix the 20th day of July as the date—

A. That is the date that the lease was signed.

X Q. 20. What lease?

A. Of Mon-si-moh to Ray W. Jones.

X Q. 21. How are you able to fix the date on which Mon-si-moh signed the lease to Ray W. Jones?

A. Well, I witnessed the lease, and I have seen the lease a good many times, and it is endorsed the 20th day of July, and I know it was signed on that day.

X Q. 22. Where was it signed?

A. At Red Lake agency, in Speer's hotel.

X Q. 23. Was that the occasion that Mr. Kellogg speaks of as your being present and going to the agency with him?

A. Well, that was during that trip—yes; that was one of the occasions.

X Q. 24. Had you ever made an effort previous to that time to obtain a lease from Mon-si-moh, either for Ray W. Jones or any other person?

A. Not to obtain a lease. I asked Moose Dung if he would lease that land to Jones.

X Q. 25. When did you do that?

A. That was in January.

X Q. 26. Where was that?

A. It was over here on the land itself; I met Moose Dung.

X Q. 27. Was Mon-si-moh then living upon the land?

A. No, sir.

X Q. 28. Did he have any house upon the land?

A. Yes; I think that little log house was there.

X Q. 29. Wasn't it at his house that you asked that question?

A. No, sir; it was not.

X Q. 30. Where was it?

A. He was stopping over with _____ on the reservation. John Peterson went over and got him, and I met him over here on his land near the coolie.

X Q. 31. What was that conversation?

A. I asked him if he would lease that land to a party to build a saw-mill on it. He said he would. I asked him how much he wanted for the land. He wouldn't tell me. He said he wanted to take part himself. He said he would lease the land, but he wanted to use a part himself.

156 X Q. 32. Are you testifying that from your own knowledge?

A. From my own knowledge, sir. Well, of course this was done through an interpreter, and that is the way it was given to me by the interpreter.

X Q. 33. You don't know of your own knowledge that what you said to the interpreter was conveyed to Mon-si-moh, do you?

A. Oh, no; I couldn't say that, because I don't understand Chip-pewa; but my questions were addressed to the interpreter and by the interpreter put to Mon-si-moh.

X Q. 34. So far as you know?

A. Well, yes; so far as I know. I don't understand the Chippewa language at all.

X Q. 35. Wasn't you then informed by the person acting as interpreter that Mon-si-moh had already given a lease to P. and J. Meehan?

A. No, sir.

X Q. 36. Didn't John Peterson inform you at that time and at that place that Moose Dung said in response to your desire to obtain a lease that he had already leased some right to P. and J. Meehan, or words to that effect, so that you had knowledge that P. and J. Meehan claimed some rights in and upon the strip lot 1?

A. He said that—

X Q. 37. Can't you answer my question yes or no, and give any explanation you choose afterwards?

A. There was nothing said in regard to P. and J. Meehan having a lease of that strip.

X Q. 38. Well, that does not answer my question. I ask you if John Peterson did not inform you—

A. He didn't inform me that P. and J. Meehan had any lease to that strip.

X Q. 39. I ask you—that is equivocal.

A. Ask me again.

X Q. 40. I ask you if he did not inform you, as coming from Moose Dung, that Moose Dung had leased some interest in and upon lot 1 to P. and J. Meehan.

A. He did not.

X Q. 41. Nor words to that effect?

A. He said nothing about any lease to P. and J. Meehan.

X Q. 42. What did John Peterson inform you? Was P. and J. Meehan mentioned in the conversation that John Peterson had with you and Moose Dung in which Peterson was interpreter?

A. No, sir; there was not.

X Q. 43. Did you at that time have any knowledge that P. and J. Meehan claimed some rights in and upon lot 1?

A. I had heard something to that effect; yes, sir.

X Q. 44. What had you heard?

A. I heard that they had some kind of a paper in regard to it; that is all. I never saw it and didn't know what it contained.

X Q. 45. What did John Peterson tell you in regard to it at that time and place?

A. He told me that Moose Dung said there was a paper
157 out for a narrow strip, about four feet wide, he said, but he said it was no good, and that he could lease the whole of it; that is what he told me.

X Q. 46. You have testified in your examination-in-chief that there were no piles driven in the river along lot 1 at that time?

A. No; I didn't say there wasn't any driven in the river. I said there was none driven on that ten-foot strip.

X Q. 47. What is the fact about there being piles driven in the river for boomage purposes along lot 1, prior to June or prior to July 20th, 1894?

A. There were some piles driven along there ranging from 37 feet, 50, and then I believe from 100 or so feet from the shore line from the water line.

X Q. 48. Did you ever measure the distance from low-water mark on the north and west bank of the river to the piles standing in the river—that first pile standing in the river?

A. I measured it at the time—in the winter time, last winter, when the water is at the side; it usually is with the dam in here. I don't know whether you call that low-water mark or not; it would be but very little difference in water with low or high water in the banks each side at that point.

X Q. 49. What authority, if any that you know of, did the parties mentioned have for placing a boat-house and these structures you have mentioned in your direct testimony on Moose Dung's lot?

A. All I know is what the parties told me that they leased the right from Moose Dung.

X Q. 50. Do you know, Mr. Knox, as a matter of public notoriety, that Moose Dung has claimed to own any fee to lot 1 and other lands adjoining?

A. What is that?

X Q. 51. I say do you know of your own knowledge, either from Moose Dung or from others, as matter of reputation, that Moose Dung claimed to own lot 1 in fee?

Mr. KELLOGG: Objected to as immaterial.

A. Why, I have heard it through the columns of the News, edited by yourself and Pete.

X Q. 52. You never heard it from Moose Dung, did you?

A. No, sir.

X Q. 53. Or from any one who pretended to interpret it from him?

A. No, sir; on the contrary, because he showed me a paper once of a lease of that land that he had signed down somewhere in the interior, and it had been cancelled because it was not approved by them.

X Q. 54. Have you ever measured the width of the river across from where the shanty was erected that you have testified to?

A. No; I have never measured the width.

X Q. 55. You could not testify as to the distance across the river?

A. Only to estimate it.

X Q. 56. These piles driven in the river are plainly to be seen by any one standing upon the north and west bank of the river, were they not?

A. Oh, yes.

158 X Q. 57. These piles were driven all along the shore of lot 1, were they not?

A. Well, they were about 50 feet, I should judge, apart.

X Q. 58. Well, the question was whether they were not driven all along the north and west shore of lot 1.

A. Well, at that distance apart, yes; there would be a pile about every 50 feet.

X Q. 59. Do you know when you first observed them in the river?

A. Well, at that point I believe they were driven in the spring of 1893, and were washed out, some of them, anyway, and in the spring of 1894 they were replaced in about the same position, I guess.

X Q. 60. The piling, then, had been maintained for some time prior to June 20th, 1894?

A. Well, the piling that are in there now I believe were driven in the spring of 1894.

X Q. 61. Do you mean in the spring of 1894—the winter, I suppose?

A. Maybe they commenced in February. I should say the latter part of February.

X Q. 62. While the ice was in the river?

A. Yes; while the ice was in the river.

X Q. 63. Might there not have been piling and boom sticks or timber piled upon lot 1 and you not have seen them prior to July 20th, 1894?

A. On lot 1?

X Q. 64. Yes.

A. Why, there might have been something piled up there and I not seen it; yes; I didn't see anything.

X Q. 65. What was the first inception of your interest in this controversy or in the lot in question?

A. It was along about the last of May or first of June, 1894, when Robert Stit came to this town looking for a mill site and he hit upon this piece of land here, and he referred the matter to Ray W. Jones, and Mr. Jones requested me to find out whether it could be rented or not.

Mr. KELLOGG: I will ask you to adjourn the further examination to the house of William Spears, at Red Lake agency, tomorrow at 2 p. m.

Mr. LEE: I object to having it adjourned to any office, time, or place, because they understand that heretofore the testimony has been taken by mutual agreement for the mutual accommodation of both parties; that there is no evidence in the hands of the commissioner that any notice has been given of the time of taking the testimony at this time, and that the plaintiffs have no knowledge whatever of the time for taking testimony being extended in any way. They have had no communication from their attorney by letter or telegraph or in any way, and cannot safely proceed with the examination of witnesses at this time without some knowledge on the subject, and they ask for time for that purpose to communicate with their attorneys to ascertain what has been done, having already wired them for that purpose.

The further taking of testimony in this case was here adjourned until July 23rd, at 11 o'clock a. m., at Red Lake Indian agency, Minnesota.

Title of Cause.

Depositions of Capt. John C. Lawler, Peter Graves, May-dwa-gun-on-ind, Ne-gon-e-bin-ace, Nay-ah-tah-wub, Ay-sin-e-wub-eak, O-she-now-ah-sheak, Mah-gah-de-gwon-wad, Mrs. Julia R. Spears, William R. Spears, and Cartis B. Wells, taken on behalf of the respondent at the office of the United States overseer of the Indian farm at Red Lake Indian agency, Minnesota, on Tuesday, July 23rd, 1895, before Richard A. Mabey, special examiner in this cause, pursuant to a stipulation and order of court on file herein.

Present: On behalf of the respondent, James A. Kellogg, Esq., and on behalf of the complainants, Orville Rinehart, Esq.

Whereupon the following proceedings were had, to wit:

Capt. JOHN C. LAWLER, a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Kellogg:

Q. 1. What is your age and place of residence, Captain?

A. I was 55 the 14th day of May last; I live in Illinois when I am at home.

Q. 2. What is your present occupation?

A. Well, my position here is overseer of the farm of the Red Lake and Pembina Indian agency.

Q. 3. How long have you been in that office?

A. I took it here the first day of December, 1893.

Q. 4. (Witness shown paper marked Exhibit No. 11.) And I ask you if you ever saw that paper before.

A. Yes; I think I did, or my name would not be there witnessing the interpreter's name.

Mr. KELLOGG: I offer this in evidence. It reads as follows: "White Earth, Minnesota, May 25th, 1895. Received of Robert M. Allen, U. S. Indian agency, \$33.33 $\frac{1}{2}$, being my share for two quarters' rental on lands leased to Ray W. Jones. Ne-gon-e-bin-ace, his x mark. Peter Graves, interpreter. Witnesses, J. C. Lawler."

Mr. RINEHART: Objected to as incompetent, immaterial, and irrelevant.

Q. 5. (Witness shown paper marked Exhibit 12, and asked if he ever saw that paper before.)

A. I did.

Mr. KELLOGG: The paper reads: "White Earth, Minnesota, May 25th, 1895. Received of Robert M. Allen, U. S. Indian agency, \$33.33 $\frac{1}{2}$, being my share for two quarters' rental on lands leased to Ray W. Jones. Ay-se-ne-wub-eak, her x mark. Peter Graves, interpreter. Witnesses, J. C. Lawler."

Q. 6. (Witness shown paper marked Exhibit 13, and is asked if he ever saw that paper before.)

A. I did.

Mr. KELLOGG: The paper reads: "White Earth, Minnesota, May 25th, 1895. Received of Robert M. Allen, U. S. Indian agency, 160 \$33.33 $\frac{1}{2}$, being my share for two quarters' rental on lands leased to Ray W. Jones. Bay-mway-bin-ace, his x mark. Peter Graves, interpreter. Witnesses, J. C. Lawler."

Mr. RI-EHART: I make the same objection to all of them. incompetent, immaterial, and irrelevant. The five of them are taken subject to the same objection.

Q. 7. Witness shown paper marked Exhibit 14, and is asked if he ever saw that paper before.

A. Yes, sir.

Mr. KELLOGG: The paper reads: "White Earth, Minnesota, May 25th, 1895. Received of Robert M. Allen, U. S. Indian agency, \$33.33 $\frac{1}{2}$, being my share for two quarters' rental on lands leased to Ray W. Jones. O-she-now-ab-sheak, her x mark. Peter Graves, interpreter. Witnesses, J. C. Lawler."

Q. 8. (Witness shown paper marked Exhibit 15, and is asked if he ever saw that paper before.)

A. Yes, sir.

Mr. KELLOGG: The paper reads: "White Earth, Minnesota, May 25th, 1895. Received of Robert M. Allen, U. S. Indian agency, \$32.33 $\frac{1}{2}$, being my share for two quarters' rental on lands leased to Ray W. Jones. Bay-she-bun-noke, her x mark. Peter Graves, interpreter. Witnesses, J. C. Lawler."

Q. 9. Captain, did you see these receipts signed by the several persons?

A. Yes, sir.

Q. 10. These five exhibits?

A. I saw every one of them signed; yes; the way the Indians sign; they take the pen; they do not sign; the interpreter signs the name, and they make their mark.

Q. 11. And your name appearing there is a witness to what?

A. To seeing them sign.

Q. 12. Each one of these receipts mentions \$33.33 $\frac{1}{2}$; you may state whether or not at the time of making these receipts by the several persons who signed them you paid them that much money.

A. I paid them as nearly as I could; I could not pay them thirty-three and a third cents; I paid some of them thirty-five and some thirty; just got the money and distributed it; there was \$166, I think, and sixty-five cents.

Q. 13. Do you know in the presence of whom you paid them?

A. Why, I knew them just as Indians; I didn't know them any more than that; they live here.

Q. 14. State whether or not you had a letter of direction under which you paid these several sums to these several persons.

A. Yes; I have got it here yet, I guess.

Mr. KELLOGG: I will offer the letter when he gets it, to be marked Exhibit 16.

Mr. RINEHART: Objected to as incompetent, immaterial, and irrelevant.

Mr. KELLOGG: We will get at it when you get the letter.

Q. 15. Do you know Chief Moose Dung?

161 A. Yes.

Q. 16. And do you know where he lives?

A. Well, you will have to ask me something easier than that.

Q. 17. Can you say whether or not he lives on the Red Lake reservation?

A. Why, he pretends to live down here with his sister at Little Rock; he calls that his home, I believe; I couldn't say. He is scarce three-quarters of his time, but I understand he keeps his team and a little wagon at his sister's, down just this side of Little Rock. That is my understanding of his home.

Q. 18. Do you know whether he is an annuitant of the Government?

A. Yes; he is on my rolls, annuity rolls.

Mr. RINEHART: I ask to have that answer stricken out as not responsive to the question.

Q. 19. You may say whether or not you have ever paid him the annuity from the Government.

A. Pay him in goods only; I only issue annuity goods; the agent pays annuity money.

Q. 20. You have paid him annuity goods?

A. Yes; two years, and he got his money here last fall, I seen.

Q. 21. Do you know Ne-gon-e-bin-ace?

A. Yes.

Q. 22. Can you say whether or not he is an annuitant of the Government?

A. Draws his annuity; he draws annuity goods. I can tell by looking on the pay-rolls.

Q. 23. Do you know whether he lives on this reservation?

A. Yes; he is a nephew of the present Chief Moose Dung.

Q. 24. He lives on the reservation, does he?

A. Yes, sir.

Q. 25. Ay-sin-e-wub-eak—how do you pronounce that?

A. Ay-sin-e-wub-eak.

Q. 26. Captain, do you know Ay-sin-e-wub-eak?

A. No; I couldn't say whether I knew her or not. I know her when she comes in and represented it to be her and to draw for the money. The interpreter said it was her and old Moose Dung said it was her.

Q. 27. Does she draw an annuity from the Government?

A. Yes.

Mr. RINEHART: Objected to as incompetent, immaterial, and irrelevant.

Mr. KELLOGG: Just have it entered that all this testimony with regard to these people is subject to your objection, and if you have any special objection to the question, why, interpose that.

Q. 28. Do you know O-she-now-ah-sheak?

A. Yes.

Q. 29. Do you know where she lives, Captain?

A. Down by Little Rock somewhere.

Q. 30. Can you say whether or not it is on the reservation?

A. Yes.

Q. 31. Does she draw an annuity from the Government?

162 A. Yes.

Mr. RINEHART: Same objection.

Q. 32. Have you ever issued her anything?

A. Issued her goods.

Q. 33. Can you say whether or not you saw her draw her money from the Government?

A. No; I was not in, but there is a thousand forty of them draw money. I don't pay much attention to it.

Q. 34. Bay-mway-bin-ace—you may state whether or not you know him.

A. Yes; he lives at the outlet.

Q. 35. State where he lives, if you know.

A. He lives at the outlet, on the left-hand side as you go down the river—that is, he did the last time I was there.

Q. 36. I understand you to mean the outlet of Red Lake river from Red lake?

A. Yes; on the south bank of the river.

Q. 37. Do you know whether or not that is on the reservation?

A. Yes.

Q. 38. And can you say whether or not he is an annuitant of the Government?

Mr. RINEHART: The same objection.

A. I have issued him goods; that is all I know about it.

Q. 39. Annuity goods?

A. Yes.

Q. 40. You may state whether you know Bay-sha-bun-noke.

A. I knew her when she was in here. They said it was her; that is all.

Q. 41. Where does she reside, if you know?

A. She lives out at Little Rock, this side, on Little Rock creek.

Q. 42. Can you say whether or not that is on the reservation?

A. Yes.

Q. 43. Do you know whether or not she is an annuitant of the Government?

Mr. RINEHART: The same objection.

A. I have issued her goods.

Mr. RINEHART: I move to strike out that answer as not responsive.

Mr. KELLOGG: You may cross-examine the Captain, and when we have found that letter we will read it.

Cross-examination.

By Mr. RINEHART:

X Q. 1. How long have you known Moose Dung, Captain?

A. The old chief?

X Q. 2. Yes.

A. Well, I think he was about one of the first Indians—let's see; I got here in December—since December, 1893.

X Q. 3. Well, do you know whether he has lived up here at the lake all that time?

A. Well, now, I couldn't tell you that; he has been here all the time. Where he lives I don't know; it is supposed to be—

163 X Q. 4. You have heard of him as being at other places, have you not, Captain?

A. Oh, yes; I have heard of him being at Thief River. I have seen him at Thief River; he went down with me the only time I know of his being there positively of my own knowledge.

X Q. 5. There was a considerable time after you came here that Moose Dung was not about the lake, wasn't there?

A. Well, off and on, yes; he hasn't been here off and on sometimes for months.

X Q. 6. Did you ever hear of Moose Dung's having a house at Thief River?

A. I have heard it just incidentally.

X Q. 7. Did you ever hear of his having a house there that burned down?

A. Yes; I have heard of that, but where it was I couldn't tell you.

X Q. 8. And it is after you heard of that house having burned down that you speak of his having been about the Red lake here, is it—after the house burned down?

A. I couldn't tell you anything about when it burned down.

X Q. 9. After you heard of its burning down is when you have seen him up here?

A. Yes.

X Q. 10. All the knowledge you have of where he lived is since you have been here?

A. That is all.

X Q. 11. All the knowledge you have is since December, 1893, up to the present time, isn't it, Captain?

A. Yes, sir.

X Q. 12. Do you keep on any record that you have here the place of residence of the various Indians that are under your supervision here, Captain?

A. No, only as on the reservation; there is a lot lives across the lake and a lot lives at Thief River.

X Q. 13. The only knowledge that you have then of his being on the reservation or up at Red lake is since you came here?

A. Yes.

X Q. 14. You don't know where he was, of course, prior to the time you came here or where he lived?

A. I didn't know there was such a man in the world.

X Q. 15. Do you keep any track of this man Moose Dung whatever?

A. Yes, he is chief of the band; that is the way he is carried on our rolls.

X Q. 16. And do you know anything about what particular band he is chief of?

A. I guess it is Moose Dung's band; here is all I can tell; there is Old Chief's band, you see it says. Well, then comes on next in order, Leading Feather; that is the next chief; then Me-o-too; that is another chief, and his band; and Praying Day, that is his band; there is seven of these; I don't pretend to tell where they
164 live or anything about it; it just simply shows which band, and to these we issue annuity goods; in the same way on the annuity rolls we pay them money.

X Q. 17. Do you know where most of this Moose Dung's band live, whether or not they live at Thief River Falls?

A. Well, there is some across the lake, a few live here, and I think Moose Dung lives at Thief River.

X Q. 18. The most of Moose Dung's band are Thief River men?

A. Yes. The only way I can tell about the band is the way they are on the rolls.

Redirect examination.

By Mr. KELLOGG:

Q. 1. I show you the roll of Moose Dung's band.

A. Yes.

Q. 2. You may state, if you can, how many there are in his band.

Mr. RHINEHART: Objected to as incompetent, immaterial, and irrelevant.

A. You can tell yourself by just looking at the list.

Q. 3. It is footed at the bottom 44.

A. That is the number in the band; it begins with one and goes down; there is their age; there is the sex, and number in the family.

Q. 4. And you have only the names——

A. Of the heads of families; some heads without families or women; some of them there is just one in the family.

Q. 5. I make 148 there.

Mr. RHINEHART: How many ponies and cattle has he got, Mr. Kellogg? Don't you want a list of the ponies?

Mr. KELLOGG: I guess they don't keep a list of the ponies. Now, the Captain is unable to find that letter, but says he can state the contents.

Mr. RHINEHART: Go ahead, then, with whatever you can do.

Q. 6. Captain, you said that you received a letter from Agent Allen directing you to pay the money?

A. To these persons named——

Q. 7. On these receipts marked as exhibits.

A. He simply stated Moose Dung drew his pay down there.

Q. 8. It was under the instructions received in that letter that you paid this money over?

A. Yes.

Q. 9. From whom did you receive the money, if from any one?

MR. RHINEHART: I move to strike out the last answer as not responsive.

A. It was along about the last of May, I think.

Q. 10. From whom did you receive the money, if from any one, that you paid out?

A. It was enclosed in the envelope. Mr. Spears handed it to me; he had been over to White Earth, and Allen gave him the letter to hand to me.

PETER GRAVES, a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole
165 truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Kellogg:

Q. 1. What is your name?

A. Peter Graves.

Q. 2. And your age?

A. 25.

Q. 3. And occupation?

A. Government interpreter.

Q. 4. Where?

A. At this Red Lake reservation.

Q. 5. How long have you lived on this reservation?

A. About 20 years, I guess.

Q. 6. And what nationality are you?

A. Chippewa Indian.

Q. 7. You may state whether or not you were raised among the Indians.

A. I was raised right here.

Q. 8. How long have you been Government interpreter?

A. Four years.

Q. 9. You may state whether or not you know Bay-sha-nun-neke.

A. Yes, I know her.

Q. 10. How long have you known her?

A. The last 20 years, I guess—since I was big enough to know anybody.

Q. 11. Where does she live?

A. Little Rock. Always lived there.

Q. 12. Do you know Chief Moose Dung?

A. Yes.

Q. 13. What is his Indian name?

A. Mays-ko-ko-noy-ay.

Q. 14. And what would be the Indian for Moose Dung?

A. Mon-si-moh.

Q. 15. Which one of these names, if any, is he known by?

A. Mays-ko-ko-noy-ay.

Q. 16. And what other one, if any?

A. I don't know. Until I heard his name was "Moose Dung" the Indians told me to call him that name. We all know him by his other name. The last few years the white people call him Moose Dung.

Q. 17. Did you ever know his father?

A. No; his father died before I can remember.

Q. 18. What, if any, relation is Bay-sha-bun-noke to Moose Dung, if you know?

MR. RHINEHART: I object to that as incompetent, immaterial, and irrelevant; no proper foundation laid.

A. Sister to Moose Dung.

Q. 19. You may say whether or not, if you know, Moose Dung is a chief of a band of Red Lake and Pembinas.

A. Yes, sir; he is a chief of the bands of this reservation.

Q. 20. I hand you a paper. You may say what that is, if you know.

166 A. Moose Dung's band.

Q. 21. What is the paper?

A. Annuity roll.

Q. 22. For what year?

A. For the year 1895—that is, the fiscal year 1895.

Q. 23. And you find there Moose Dung's name?

A. It is the first on the roll.

Q. 24. And at the head?

A. Yes.

Q. 25. Can you say under what name he is carried on the roll as chief?

A. Mays-ko-ko-noy-ay.

Q. 26. What is the name above there?

A. Moose Dung.

Q. 27. What band have you there, if any?

A. Moose Dung's band.

Q. 28. Is it carried as such on the rolls of the Government here?

A. No; it is not carried that way on the money annuity roll. I say it goes by this, but I just put this Moose Dung for white people to know that this is Moose Dung's band.

Q. 29. You put it there yourself, then?

A. Yes.

Q. 30. Then, if I understand you correctly, Mays-ko-ko-noy-ay is known among the whites as Moose Dung?

A. Yes, sir.

Q. 31. And is better known as Moose Dung than Mays-ko-ko-noy-ay?

A. By the white people, but by the Indians he is known as Mays-ko-ko-noy-ay.

Q. 32. You may say whether or not he is known among the Indians as the son of old Chief Moose Dung.

A. Yes; he is known to be the son of old Chief Moose Dung.

Q. 33. You may say whether or not among the Indians Bay-sha-bun-noke is known as the daughter of old Chief Moose Dung and a sister to Moose Dung or Mays-ko-ko-noy-ay.

Mr. RHINEHART: Objected to as incompetent, immaterial, and irrelevant.

A. That is just simply what I have heard—hearsay; that is what I hear people say, they are sister and brother.

Mr. RHINEHART: I move to strike out the answer as hearsay.

Q. 34. Do you know O-she-now-ah-sheak?

A. Yes, sir.

Q. 35. How long have you known her?

A. Quite a long time. I don't remember how long.

Q. 36. Do you know whether or not she is related to Mays-ko-ko-noy-ay or Moose Dung?

Mr. RHINEHART: Objected to as incompetent, immaterial, and irrelevant.

A. I know that by hearsay.

Mr. RHINEHART: I move to strike out the answer as hearsay.

167 Q. 37. What is her reputed relation to the present Chief Moose Dung?

A. Half-sister.

Mr. RHINEHART: Objected to, and I move to strike out the answer; no foundation laid.

Q. 38. And what relation to old Chief Moose Dung?

Mr. RHINEHART: Objected to for the same reason.

Q. 39. State, if you know, whose wife she is.

A. Daughter of old Chief Moose Dung.

Mr. RHINEHART: I move to strike out that answer as hearsay; the witness not shown qualified to answer the questions.

Q. 40. And wife of whom?

Mr. RHINEHART: The same objection.

A. The old Frenchman's wife.

Q. 41. Bay-mway-way-biv-ace—do you know him?

A. Yes, sir.

Q. 42. How long have you known him?

A. For quite a long time; I don't remember.

Q. 43. Do you know what, if any, relation he is to the present Moose Dung?

Mr. RHINEHART: Objected to as incompetent, immaterial, and irrelevant; no proper foundation laid.

A. I don't know only from hearsay.

Q. 44. Well, what is it?

A. A nephew, I think.

Q. 45. And Ay-sin-e-wub-eak—do you know her?

A. Yes, sir.

Q. 46. Where does she live?

A. This side of Little Rock; about a mile from the creek.

Q. 47. How long have you known her?

A. The last fifteen years.

Q. 48. Do you know what, if any, relation she is to the present Chief Moose Dung?

Mr. RHINEHART: Objected to as incompetent, immaterial, and irrelevant; no proper foundation laid.

A. I don't know only from hearsay; I guess she is Mays-ko-ko-noy-ay—the present Mays-ko-ko-noy-ay is her uncle.

Mr. RHINEHART: The same motion.

Q. 49. Ne-gon-e-bin-ace—you may say whether or not you know him.

A. Yes; I know him.

Q. 50. How long?

A. The last fifteen years, I guess.

Q. 51. Where does he live?

A. He lives towards the old chief; about four miles from here.

Q. 52. Which way?

A. East from here.

Q. 53. What relation, if any, is he to the present Chief Moose Dung?

Mr. RHINEHART: The same objection.

168 A. I don't know.

Q. 54. Well, I mean so far as you have heard.

A. Nephew, I guess. He is the present Moose Dung's brother.

Mr. RHINEHART: The same motion.

Q. 55. In your position as Government interpreter are you called upon to know these persons personally?

A. No; they never was anything to me to find out who they are; of course I know all of them.

Q. 56. And do you know whether or not they are annuants of the Government?

A. They all draw annuities.

Q. 57. You may say whether or not they reside on this Red Lake reservation.

A. Yes, sir; they reside on the reservation; they are all enrolled.

Q. 58. You may state whether or not you have issued them Government goods.

A. Yes, sir; the agents issues goods to them.

Mr. RHINEHART: I move to strike that out as not responsive.

Q. 59. I show you Exhibits 10 to 14, and I ask you whether the Peter Graves, interpreter, there mentioned, is yourself.

A. Yes, sir.

Q. 60. You may state whether or not you interpreted these receipts to the persons who signed them.

A. Yes, sir.

Mr. RHINEHART: Objected to as incompetent, immaterial, and irrelevant.

Q. 61. You may say whether or not you were present when the money that is mentioned in the several receipts was paid to them.

Mr. RHINEHART: The same objection.

A. Yes, sir.

Q. 62. By whom, if any one, was it paid to them?

Mr. RHINEHART: The same objection.

A. Yes, sir; I witnessed all these payments here.

Q. 63. By whom was it paid to them, I ask you.

A. By Captain Lawler.

Q. 64. You may say whether or not these are the persons regarding whom you have been testifying as relations of the elder chief and present Chief Moose Dung.

A. Yes, sir; they are the ones.

Q. 65. Can you say whether or not you saw them sign the receipts?

A. I saw them touch the pen.

Q. 66. Who held the pen?

A. I held the pen.

Cross-examination.

By Mr. RHINEHART:

X Q. 1. What you have said in regard to these relations is simply what you have heard said about it?

A. Just what I heard. I don't know anything about their relations.

X Q. 2. You say this present Chief Moose Dung is recognized to be the successor of the old Chief Moose Dung?

169 A. Yes, sir.

X Q. 3. By the Indians on this reservation?

A. Yes, sir.

X Q. 4. You say he is known among the white people now as Moose Dung?

A. Yes, sir.

X Q. 5. And that the Chippewa name for Moose Dung is Mon-si-moh?

A. Mays-ko-ko-noy-ay.

X Q. 6. For Moose Dung?

A. Mon-si-moh.

X Q. 7. And this name that you spoke of now—is the name pronounced that way?

A. Mays-ko-ko-noy-ay.

X Q. 8. That is the name that he always had from childhood; that is his own proper name?

A. Yes; that is his proper name.

X Q. 9. This other name—that is a name just given to him simply in right of his being successor of his father as chief?

A. Yes, sir.

X Q. 10. You spoke of some child of the brother of Moose Dung; do you know of any brother of Moose Dung living?

A. This present Moose Dung?

X Q. 11. Yes; do you know of any living brother of his now?

A. No; there were two brothers of his that were killed by the Sioux.

MAY-DWA-GUN-ON-IND, a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Kellogg:

(The witness was sworn and examined through Peter Graves, who was duly sworn as interpreter.)

Q. 1. Did you know old Chief Moose Dung in his lifetime?

A. Yes; he says he knew him.

Q. 2. How long before he died were you acquainted with him?

A. I knew him since I was a boy; we were raised together.

Q. 3. Did you know his family, his children?

A. He knew all his children.

Q. —. Can you give the name and age, commencing with the eldest?

A. I don't know as to whether I can remember the names of some of them, but I know all of them; the names I can't remember, some of them.

Q. 5. How many were there?

A. There were two killed by the Sioux—the eldest was one of them—and there was three women, and Moose Dung himself makes six, and there is some children he had that died when they were quite young; I can't remember the number of them.

Q. 6. How many of them are living?

A. He thinks there is four, he says; he isn't sure.

Q. 7. Can he give the names of those living?

A. O-she-now-ah-sheak, Bay-sha-bun-noke, Mays-ko-ko-noy-ay; he thinks there is only three, but isn't positive; he thinks there is four; he is going to find out, he says, inquire.

Q. 8. Do you know Ne-gon-e-bin ace?

A. Yes; he is in the other room.

Q. 9. Do you know what, if any, relation he is to old Chief Moose Dung?

Mr. RHINEHART: Objected to as incompetent, immaterial, and irrelevant.

A. Grandfather.

Q. 10. Do you know who Ne-gon-e-bin-ace's father or mother was?

A. Ne-gon-e-bin-ace's father was killed by the Sioux, he said.

Q. 11. What relation was he to the old Chief Moose Dung?

A. He was a son of Moose Dung's.

Q. 12. Do you know Ay-sin-e-wub-eak?

A. I don't know her.

Q. 13. O-she-now-ah-sheak—do you know her?

A. Yes.

Q. 14. What relation is she to the present Chief Moose Dung?

A. That is his brother, the same father and same mother, he says.

Q. 15. It is a woman, isn't it?

A. Yes; she is a woman.

Q. 16. The present chief is her brother—that is what he means?

A. Yes.

Q. 17. Bay mway-way-bin-ace—do you know him?

A. He says he just recollects that he didn't tell what was right for Ne-gon-e-bin-ace's father; that this Ne-gon-e-bin-ace's mother was a sister of this present Moose Dung.

Q. 18. Well, Bay-mway-way-bin-ace—that is the one I was asking him about; does he know him?

A. Yes.

Q. 19. What, if any, relation is he to the present Chief Moose Dung?

A. He says this present Moose Dung is his uncle.

Cross-examination:

By Mr. RHINEHART:

X Q. 1. The one that was killed by the Sioux was the oldest son of old Mon-si-moh?

A. That is what he said.

X Q. 2. Did he say that was the oldest son?

A. Yes; he said there was two of them killed, and one of them was the oldest.

X Q. 3. When was he killed by the Sioux?

A. He says he could not tell the number of years.

X Q. 4. Can you tell whether it was before old Moose Dung died that the sons were killed?

A. Yes; it was before he died.

By Mr. KELLOGG:

Q. 20. Did either of them leave children?

A. He says the other one didn't have a wife; he was a young man.

By Mr. RHINEHART:

171 X Q. 5. Was this before the treaty that he was killed, the treaty of 1863?

A. Yes; that was before that; a long time before.

X Q. 6. How many wives did old Chief Moose Dung have?

A. Two.

X Q. 7. Are those all children of the same wife?

A. No; he says Mays-ko-ko-noy-ay and Bay-sha-buu-noke was by one of Moose Dung's wives and O-she-now-ah-sheak by the other woman.

X Q. 8. The sister that lives at Little Rock and Moose Dung are full brother and sister?

A. Yes, sir.

X Q. 9. Do you know whether the living Moose Dung and his sister were children of the first wife or the second wife?

A. The one he took first, Mays-ko-ko-noy-ay. The present Moose Dung and his full sister, they were children of the first wife.

NE-GON-E-BIN-ACE, a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Kellogg:

(The witness was sworn and examined through Peter Graves, who was duly sworn as interpreter.)

Q. 1. Where do you live?

A. Down this way.

Q. 2. How far from the Red Lake agency?

A. I think it is about four miles.

Q. 3. Is it on the reservation?

A. Yes.

Q. 4. Do you belong to any band on the reservation?

A. Yes.

Q. 5. Whose?

A. Old Chief May-dwa-gun-on-ind.

Q. 6. How old are you?

A. I don't know.

Q. 7. What is your occupation?

A. I have nothing to do but look after my little crop, he says.

Q. 8. Do you know the present Chief Moose Dung?

A. Yes.

Q. 9. How long have you known him?

A. A long time ago; he can't tell.

Q. 10. As long as you can recollect?

A. Yes.

Q. 11. What, if any, relation are you to him?

A. My uncle, he is.

Q. 12. Whose child are you?

A. A sister of Moose Dung's.

Q. 13. What was her name?

A. He don't know, he says; he was a little boy when she died.

Q. 14. How many brothers and sisters have you?

A. I haven't any, he says; I am just alone.

172 Q. 15. How many brothers and sisters has the present Chief Moose Dung living?

A. Bay-sha-bun-noke and O-she-now-ah-sheak; two sisters and one dead that left a daughter; two sisters living and one is dead, leaving a daughter.

Q. 16. What was the name of the child of the sister that is dead?

A. Ah-sin-e-wub-eak.

Q. 17. Do you know Bay-mway-way-bin-ace?

A. Yes.

Q. 18. What relation is he to old Moose Dung?

A. Grandfather. He was a grandson of old Chief Moose Dung.

Q. 19. Any more of the children or grandchildren of the old Chief Moose Dung living?

Mr. RHINEHART: Objected to as incompetent, immaterial, and irrelevant; no proper foundation laid.

A. He doesn't know of any other children.

Q. 20. You may state whether you received some money from Capt. Lawler, the overseer, as rent for land down at Thief River?

A. Yes; he got the money, he said.

Q. 21. Did you sign a receipt for it?

A. Yes.

Cross-examination.

By Mr. RHINEHART:

X Q. 1. Do you know what you got the money for?

A. Yes; he pretty near knows it, he says. He says it was for the rent of land at Thief River.

NAY-AY-TAH-WUB (Little Thunder), a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Kellogg:

(The witness was sworn and examined through Peter Graves, who was duly sworn as interpreter.)

Q. 1. Where do you live?

A. Right across the creek here a little ways.

Q. 2. On the reservation?

A. Yes.

Q. 3. What is your occupation?

A. I am at present a policeman.

Q. 4. How old are you?

A. I guess I am forty-eight years old.

Q. 5. What, if any, tribe or band do you belong to?

A. He says, I am at the head of a band.

Q. 6. Did you know old Chief Moose Dung?

A. Yes.

Q. 7. Do you know when he died?

A. He knows he is dead, but couldn't tell the number of years since.

Q. 8. Do you know the present Chief Moose Dung?

A. Yes.

Q. 9. Do you know his brothers and sisters?

Mr. RHINEHART: Objected to as calling for a conclusion.

173 A. I don't know the names of his brothers that are dead but I know his sisters that are living now.

Q. 10. What are their names?

A. Bay-sha-bun-noke is one of them and O-she-now-ah-sheak the other.

Q. 11. Has he any other brothers or sisters living?

A. No; he hasn't.

Q. 12. Do you know the brothers and sisters, if any, of his that are dead?

A. There is one woman that is dead, a sister of Moose Dung; her daughter is here—in the other room here.

Q. 13. What is the daughter's name?

A. Ay-sin-ewub-eak.

Q. 14. Did any other of his brothers and sisters leave a child or children?

Mr. RHINEHART: Objected to as calling for a conclusion; no foundation shown.

A. Bay-mway-way-bin-ace.

Q. 15. Any others?

A. That is all I know.

Q. 16. Do you know the present Chief Moose Dung well?

A. Yes; he is well acquainted.

Q. 17. And the other persons whose names we have mentioned as relations of his?

A. Yes.

Q. 18. Heard them talk about their relations frequently?

Mr. RHINEHART: Objected to as incompetent, immaterial, and irrelevant; calling for hearsay.

A. No; never heard them talk about their relations.

Q. 19. How do you know these persons are relations of the elder Chief Moose Dung?

A. He says it is by the father that he knew they were relations.

(No cross-examination.)

AY-SIN-E-WUB-EAK, a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in response to interrogatories propounded to her by Mr. Kellogg:

(The witness was sworn and examined through Peter Graves, who was duly sworn as interpreter.)

Q. 1. What is your name?

A. Ay-sin-e-wub-eak.

Q. 2. Where do you live?

A. Over to Little Rock.

Q. 3. Is that on the reservation?

A. Yes.

Q. 4. How old are you?

A. I don't know; 23, she says.

Q. 5. Do you belong to a band of Red Lake Indians?

A. Yes.

Q. 6. Whose?

174 A. Leading Feather's.

Q. 7. Can you read or write?

A. No.

Q. Do you know the Chief Moose Dung?

A. Yes.

Q. Are you any relation to him?

A. Yes.

Q. 10. What relation?

A. Uncle.

Q. 11. Whose child are you?

A. Sister of Moose Dung, Mays-ko-ko-noy-ay.

Q. 12. Where is your mother?

A. She is dead.

Q. 13. How many brothers and sisters have you by that mother?

A. She says, I have none; I am alone.

Q. 14. How many uncles and aunts have you living on your mother's side?

A. Just one uncle.

Q. 15. Who is that?

A. Mays ko-ko-noy-ay.

Q. 16. How many aunts?

A. Two.

Q. 17. Who are they?

A. Bay-sha-bun-noke and O-she-now-ah-sheak.

Q. 18. How many children of the old Moose Dung are dead that left children?

Mr. RHINEHART: Objected to as incompetent, immaterial, and irrelevant; no foundation laid for it; the witness not shown to have any knowledge.

A. I don't know.

Q. 19. Did you receive some money from Capt. Lawler here for rent?

A. Yes.

Q. 20. Did you sign a receipt?

A. Yes.

Q. 21. Do you know how much was paid to you?

A. She received \$33.30, she says.

Q. 22. What was it for?

A. I suppose that it was a share of the rent of the land at Thief River.

(No cross-examination.)

O-SHE-NOW-AH-SHEAK, a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in response to interrogatories propounded to her by Mr. Kellogg:

(The witness was sworn and examined through Peter Graves, who was duly sworn as interpreter.)

Q. 1. What is your name?

A. O-she-now-ah-sheak.

Q. 2. How old are you?

175 A. I couldn't tell.

Q. 3. Where do you live?

A. Over at Little Rock.

Q. 4. Is that on the reservation?

A. Yes.

Q. 5. Do you belong to a band?

A. Yes.

Q. 6. Whose band?

A. I-in-je-wah-nay. He is a chief down at Thief River.

Q. 7. Do you know Chief Moose Dung?

A. Yes.

Q. 8. Are you any relation to him?

A. Brother.

Q. 9. Did you have the same father and the same mother that he did?

A. The same father but different mothers; our father had two wives, she says.

Q. 10. Are you older or younger than Moose Dung?

A. I am older.

Q. 11. Have you any other brother?

A. No; he is the only brother.

Q. 12. Have you any sisters living?

A. No; she ain't got no sister.

Q. 13. How many children did your father have?

A. I couldn't tell the number; there was a lot of children out of his two wives; all I know is what are living now.

Q. 14. How many are living?

A. Six of us.

Q. 15. Well, children of her father, I mean?

A. Three.

Q. 16. What are their names?

A. Bay-sha-bun-noke, Mays-ko-ko-noy-ay, and myself.

Q. 17. Who are the other three that she speaks of?

A. Bay-mway-way-bin-ace, and the one that is in the other room and Na-gon-e-bin-ace.

Q. 18. What relation are they to her?

A. I am their aunt.

Q. 19. Whose child is Bay-mway-way-bin-ace?

A. He is my brother's son.

Q. 20. Where is Bay-mway-way-bin-ace's father?

A. The Sioux killed him, she says.

Q. 21. Did he leave any other children besides Bay-mway-way-bin-ace?

A. That is the only one.

Q. 22. Whose child is Ne-gon-e-bin-ace?

A. She says it was a full sister of Mays-ko-ko-noy-ay; that is Moose Dung.

Q. 23. Where is that sister?

A. She says the mother is over here at the point.

Q. 24. Who, Ne-gon-e-bin-ace?

176 A. Ne-gon-e-bin-ace's mother is dead.

Q. 25. And that is her sister and Moose Dung's sister?

A. Yes; sister.

Q. 26. Did she leave any other children than Ne-gon-e-bin-ace?

A. That is the only one.

Q. 27. Who was Ay-sin-e-wub-eak's mother?

A. It was her sister; it was a full sister of Moose Dung.

Q. 28. Where is this sister?

A. She is dead.

Q. 29. Did she leave any other children than Ay-sin-e-wub-eak?

A. That is the only one she left.

Q. 30. Are these all there are of the relations of Moose Dung?

A. Yes; that is all.

Q. 31. Did you receive some money from Capt. Lawler here?

Mr. RHINEHART: Objected to as incompetent, immaterial, and irrelevant.

A. Yes.

Q. 32. State, if you know, what it was paid to you for.

A. I suppose it was for the same thing that my brother gets money for his, she says.

Q. 33. What was that, if you know?

A. It was for a lease of land that I was getting money for, is what I was told, she says.

Q. 34. Did you sign a receipt for that money?

A. Yes.

(No cross-examination.)

MAH-GAH-DE-GWON-WED (OR LEADING FEATHER), a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows in response to interrogatories propounded to him by Mr. Kellogg:

(The witness was sworn and examined through Peter Graves, who was duly sworn as interpreter.)

Q. 1. What is your name?

A. May-gah-de-gwon-wed.

Q. 2. How old are you?

A. Seventy.

Q. 3. Where do you live?

A. Just a little ways from here.

Q. 4. On the reservation?

A. Yes; right close to the enclosure of this Government fence.

Q. 5. Did you know old Chief Moose Dung in his lifetime?

A. Yes; I was always in his house, in his wigwam; I used to play with one of his sons.

Q. 6. How many children did he have?

A. There was a lot of them, he says, that died; I couldn't count them.

Q. 7. How many of them are living, if you know?

A. Only three.

Q. 8. What are their names?

A. The woman that is the oldest, her name is Bay-she-wub-eak.

Q. 9. The next one?

177 A. O-she-now-ah-sheak, that is another one, and Mays-ko-ko-noy-ay.

Q. 10. Did any of those who died leave children?

A. Three.

Q. 11. What are the names of the children?

A. The name of the deceased daughter of Moose Dung—that is, the mother of Ne-gon-e-bin-ace.

Q. 12. Is that the only one she left?

A. That is the only one.

Q. 13. And the next one?

A. That is, Ne-gon-e-bin-ace's father's name was Ka-new-wuk.

Q. 14. Did he leave any more children than this one?

A. That is the only one.

Q. 15. And the next one?

A. The youngest woman left also a child; She-ne-ke-gin was her name.

Q. 16. What is that one's name?

A. Ay-sin-e-wub-eak.

Q. 17. Are these all of the children of the elder Moose Dung living and the children of these dead that you know of?

A. He says that is all that are dead or living.

Q. 18. How do you know this to be all?

A. I used to go and visit him quite often; that is the reason that I know.

Q. 19. Are you a member of a band of Indians here?

A. Yes; I belong here.

Q. 20. What band do you belong to?

A. I am head of the band.

Q. 21. What is the name of it?

A. He says he can't talk the English of it.

Q. 22. I ask him what is the name of his band?

A. He says he can't say. Leading Feather, that is the way we have got him upon the rolls.

(No cross-examination.)

Mrs. JULIA R. SPEARS, a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in response to interrogatories propounded to her by Mr. Kellogg:

Q. 1. Where do you live, Mrs. Spears?

A. At Red Lake agency.

Q. 2. How old are you?

A. 24.

Q. 3. And you are the wife of whom?

A. W. R. Spears.

Q. 4. And what is his business?

A. Indian trader.

Q. 5. Do you know James Meehan?

A. Yes, sir.

Q. 6. Do you recollect the circumstance of Mr. Knox, Chief Moose Dung, and myself being here about a year ago?

178 A. Yes, sir.

Q. 7. Can you say whether or not James Meehan was here during that time?

A. Yes, sir.

Q. 8. You may state whether or not during the time that Moose Dung and myself and Mr. Knox were here, did you interpret a conversation between the chief and Mr. Meehan.

A. Yes, sir; I did.

Q. 9. Where?

A. Right in this room.

Q. 10. This is the sitting-room of your residence, is it?

A. Yes.

Q. 11. Do you remember the time of day, whether the forenoon or afternoon?

A. What time was it that you went out walking and went down to the lake? Was it in the forenoon or afternoon?

Q. 12. It was after dinner, about 2 o'clock.

A. Well, it was during that time.

Q. 13. What was the subject of the conversation between Meehan and Moose Dung?

A. About the lease.

Q. 14. What lease?

A. About the lease of the land from Moose Dung; Moose Dung's land.

Q. 15. Can you tell what Meehan said to Moose Dung, and what Moose Dung said to Meehan?

A. Well, he wanted him to let the lease go to him, and he told him that he had promised to let the lease go to them, and he had better not let it go to anybody else but them; that is what he said; that is what I interpreted for him anyway.

Q. 16. What, if anything, did he say to Moose Dung about letting me have a lease for Mr. Jones?

A. Well, he said he had promised to let them have the lease first, and he had better not let Jones have it.

Q. 17. Can you tell the language that Mr. Meehan used on that occasion, about letting Jones have the lease?

A. I didn't quite understand what you said.

Q. 18. Can you tell the language used by Mr. Meehan about Moose Dung letting Jones have the lease—the words he spoke?

A. Well, he spoke and told him, he said he had always been a friend of the Indians, and tried to do all he could for them, and he couldn't see why Moose Dung couldn't let him have the lease, and he says—well, I can't remember all that he did say.

Q. 19. What did Moose Dung say, if anything, in reply to that?

A. Well, he didn't give no answer to it.

Cross-examination.

By Mr. RHINEHART:

X Q. 1. Who was present at the time this conversation occurred, Mrs. Spear?

A. There wasn't anybody present but Moose Dung, Mr. Jim Meehan, and myself.

179 X Q. 2. How long was that before Mr. Kellogg came up here with the Jones lease?

A. It was just at the time that Mr. Kellogg was up here.

X Q. 3. Was it before the Jones lease was made or after it was made?

A. It was after the lease was made out.

X Q. 4. Did you and Mr. James Meehan and Mon-si-moh or Moose Dung have any conversation in relation to this lease of land before the Jones lease was made?

A. It was Pat. that had a conversation with Moose Dung.

X Q. 5. It was Patrick Meehan that you have meant in all your testimony here?

A. We had had a talk with Moose Dung about a lease before this; it was in the spring of the year.

X Q. 6. Well, now, was Mr. Kellogg here at Red Lake at the time that this occurred—this conversation?

A. Yes; he was right here at the agency. This is when James Meehan and Moose Dung had this talk.

X Q. 7. And some time before that you had had a talk with Pat. Meehan and Moose Dung?

A. Yes.

X Q. 8. Now, this conversation with James Meehan and Moose Dung arose after Moose Dung had signed the Jones lease, did it?

A. It was before he had signed it. He didn't sign until in the evening.

X Q. 9. And as I understand you—

A. Because Mr. Kellogg told him to consider the matter—think the matter over.

X Q. 10. And, as I understand you, then, Mr. James Meehan protested to Moose Dung against his making the Jones lease; is that the idea?

A. Yes; that is just what he did.

X Q. 11. You say that Moose Dung told Mr. Meehan that he didn't like the way they had treated him?

A. That is what he said.

X Q. 12. Did he say what it was that they had done wrong to him?

A. Yes; he told them what it was, but I don't just remember what he told them, but he told them his reasons.

X Q. 13. Was it anything in regard to his employment in their saw-mill?

A. I believe it was. He said they hadn't paid him what was due him, and he said they had promised him help, and he hadn't got any help from them.

X Q. 14. Now, Mrs. Spears, James Meehan and Moose Dung had some talk at that time about that they hadn't paid him as much as they ought to have paid him, you say?

A. Yes. I guess they owed him something on this other land. They leased some land from him, didn't they?

X Q. 15. Yes.

A. And he said they owed him something on that—the
180 first one—and again he told them he didn't like the way they seemed to want to rob him, or something; that they made out the lease; that they made him sign and they didn't sign.

X Q. 16. That was some lease that the Meehans had of him some time before this—some old lease?

A. Some old lease.

X Q. 17. When was it, as to the year and month and day, as near as you can recollect, that this conversation occurred?

A. I don't remember. I know the year, but I don't remember the day.

X Q. 18. It was upon the day that the Jones lease——

A. Was made out.

X Q. 19. Was made here?

A. Was made out here. The lease was made out in the forenoon—I believe it was—and this was in the afternoon.

X Q. 20. Where was Mr. Kellogg at the time this conversation occurred?

A. He was out walking down to the lake, he and Mr. Knox.

X Q. 21. You acted as the interpreter between Mr. Kellogg and Moose Dung in regard to the making of the Jones lease, did you?

A. Yes, sir; I did.

X Q. 22. And acted as interpreter in the conversation between Moose Dung and Mr. Meehan?

A. Yes, sir.

X Q. 23. Now, in the morning the Jones lease was made out; was Moose Dung here at the time it was made out?

A. Yes, sir; he was.

X Q. 24. Was there any conversation between Mr. Kellogg and Moose Dung and yourself at that time in the morning?

A. Yes, sir. I explained the lease to him; I read the lease and explained it to him.

X Q. 25. What did he say about the lease at that time?

A. Well, he said he was satisfied with it.

X Q. 26. Why didn't he sign at the time it was drawn out in the morning?

A. Well, he said he wanted a little time to consider about the matter, and Mr. Kellogg told him he would give him time to consider.

X Q. 27. Did he say what parts of it he wanted to consider—what there was about the lease that he wanted to consider?

A. No; he didn't say anything exactly what it was, but he said of course he was taken by surprise, and he wanted to think over it.

X Q. 28. Isn't it a fact, Mrs. Spears, that Moose Dung said that he wanted to consult with the overseer before he signed the lease?

A. Yes; I think he said he would go and see the overseer about it first. Wasn't that what he said? Now, let me see. I don't just remember that.

X Q. 29. Didn't he say that whatever business he had to transact he always followed the advice of the overseer?

A. Yes; he said he would go and see the overseer about it first; that is what he said.

181 X Q. 30. Now, in the afternoon, when he had this conversation with Mr. Meehan, did he say anything about having seen the overseer?

A. No; he didn't take time to see him.

X Q. 31. Did he say in the evening as to whether he had seen the overseer?

A. No; he didn't say anything.

X Q. 32. He never told you after that time as to whether or not he had seen the overseer?

A. No; he didn't say anything to me about it.

X Q. 33. How long did this conversation last in the afternoon between Mr. Meehan and yourself and Moose Dung?

A. It must have been about half an hour.

X Q. 34. In the evening how long did the conversation last between Mr. Kellogg, Moose Dung, and yourself—at the time that the lease you say was made?

A. Well, sir, it couldn't have been an hour.

X Q. 35. Was it a half hour?

A. Just about half an hour, I think.

X Q. 36. And in that conversation you went over the whole subject of the making of the lease, did you?

A. Yes, sir; I did.

X Q. 37. And consulted with Moose Dung as to the advisability of making a lease, did you?

A. Yes, sir.

X Q. 38. And as to whether or not the lease would be profitable to him—whether it would be a good lease for him to make?

A. Well, he kind of consulted us what to do about it.

X Q. 39. Yes; I say you consulted with him as to whether it would be a good lease?

A. Yes.

X Q. 40. That conversation was in the presence of Mr. Kellogg—all of it—was it?

A. Yes, sir.

X Q. 41. Did you explain to Mr. Kellogg all that you said to Moose Dung and all that Moose Dung said to you?

A. Yes, sir; he was there.

X Q. 42. So Mr. Kellogg was fully informed what was going on at that time?

A. Yes, sir; he was.

X Q. 43. Now, at that time in the evening you discussed the fact that Mr. Meehan and Moose Dung had been having some conversation in the afternoon, didn't you? You spoke about Meehan's having been after Moose Dung in the afternoon that night.

A. Well, I didn't say nothing.

X Q. 44. There wasn't anything said about the Meehan matter in the evening at all?

A. No; not anything at all.

X Q. 45. In all these conversations that you had here in the morning and in the evening with Mr. Kellogg there wasn't anything said whatever about Mr. Meehan being here and talking to Moose Dung about getting a lease of this land?

A. Not a word.

X Q. 46. There wasn't a word said, then, as to whether or not Mr. Meehan was willing to offer him more or to do better by him than Jones offered to do?

A. No, sir; not a word.

X Q. 47. Mr. Meehan told him he would do better by him than what Jones would do in the afternoon?

A. Yes, sir.

X Q. 48. In your hearing?

A. Yes; I interpreted it for him. He told him he would build him a house and pay him so much.

X Q. 49. And when you came to talk the matter over with Moose Dung in the evening you didn't say to him it would be better to make the Jones lease than it would be to have anything further to do with the Meehans?

A. No; I didn't. I didn't decide for one any more than I did the other.

X Q. 50. But you consulted about the advisability of making this lease?

A. Well, I told him it was better to make a lease of the land to somebody than to have it lying there idle.

X Q. 51. But you didn't say whether he had better consider Meehan's proposition or take Jones' up?

A. No; I told him he had better—as he was old enough he had better do as he pleased about it.

X Q. 52. Did he ask you at all as to what you thought—whether he had better deal with Meehan or whether he had better deal with Jones?

A. No.

X Q. 53. Where was Meehan at the time that the lease was made in the evening?

A. He was at the other hotel, I think; of course, I don't know just where he was.

X Q. 54. Where was Meehan at the time that the conversation occurred in the morning?

A. He was at the agency.

X Q. 55. Was he here in the house?

A. No.

X Q. 56. Did the conversation occur in your house?

A. Yes; he was here.

X Q. 57. Was he here at that time?

A. Not in the house.

X Q. 58. He was not a party to any of the conversation between Moose Dung and yourself? Mr. Meehan was not a party to any of these conversations? They were not had in his presence?

A. No.

X Q. 59. Did you tell Mr. Meehan of the conversation you had had with Kellogg in the morning?

A. No, sir.

183 X Q. 60. Didn't say anything to him about Kellogg being here with the Jones lease?

A. No; I didn't say a word.

X Q. 61. How did the matter arise between Meehan, Moose Dung, and yourself about the Jones lease?

A. I couldn't tell you; I was out in the kitchen, and he simply came out there and asked me if I wouldn't do him a favor, and I told him certainly; if there was anything I could do I was perfectly willing, and he asked me if I wouldn't interpret for him, and I told him yes.

X Q. 62. That was Mr. Meehan?

A. Yes; and I told him I would, and I came in here; and all he said, he said he understood there was a party up here that wanted to get a lease; that is all; he didn't go any further.

X Q. 63. And he told Moose Dung he didn't want him to make this lease to the other parties?

A. Well, not exactly told him he didn't want him, but he said he had better not.

X Q. 64. Did he say why he had better not make the lease?

A. No; he didn't say anything about it at all.

X Q. 65. Mr. Kellogg was stopping here at your house at that time, wasn't he?

A. Yes, sir.

X Q. 66. How long had he been here?

A. He hadn't been here more than a day, anyway.

X Q. 67. And had previous to this time when these conversations occurred?

A. Yes, sir.

X Q. 68. Had you had any conversation with Mr. Kellogg about this Jones lease before the time it was drawn up that morning?

A. No, sir; he just simply asked me to come and interpret.

X Q. 69. Mr. Kellogg asked you to come and interpret?

A. Yes, sir.

X Q. 70. Did you ever have any conversation with Mr. Kellogg with relation to this Jones lease other than this which you had in the presence of Moose Dung?

A. No, sir.

X Q. 71. Never talked with him about it at all?

A. Never talked about it at all.

X Q. 72. Did you have any conversation with Mr. Kellogg on any other subject while he was here other than the conversations that you had in Moose Dung's presence?

A. No, sir.

X Q. 73. Didn't speak with him while he was about the place at all?

A. No, sir.

Redirect examination.

By Mr. KELLOGG:

Q. 1. Mrs. Spears, do you recollect whether there was anything said in the conversation between Meehan and Moose Dung about their having sent forward something to the agent or to Washington about the land?

184 A. Oh, yes; Moose Dung said that he was tired of waiting for them; that they had kept putting him off about the lease, and he was tired of waiting; the reason why they made that lease to Jones; that is what he said; that is the answer he gave, and Mr. Meehan told him the reason why they were so slow about it that they had sent the papers to the agent, and the agent had neglected to send them down to Washington, but he says, 'The papers are on the way; that is what he told him.'

Q. 2. Well, that was all the lease that was referred to in that conversation?

A. Yes; that was all.

Recross-examination.

By Mr. RHINEHART:

X Q. 1. You don't mean to say, do you, that Moose Dung claimed they owed him money because some agent had been forwarding a lease to Washington?

A. No; but he said—well, he just said they owed him a little on this old lease.

X Q. 2. What we call the ten-foot-strip lease?

A. Yes; that is it, and these men, he said, he was tired waiting for them.

X Q. 3. On the application for a lease, no matter—

A. Yes; that he thought he didn't care about the lease, the reason why he let the lease go to Jones.

WILLIAM R. SPEARS, a witness produced on behalf of the respondent, after being duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in response to interrogatories propounded to him by Mr. Kellogg?

Q. 1. What is your occupation?

A. Post trader.

Q. 2. How long have you been here?

A. Sixteen years.

Q. 3. Do you know the Chief Moose Dung?

A. Yes, sir.

Q. 4. Do you know James Meehan?

A. Yes, sir.

Q. 5. Do you know Mr. Knox, of Thief River?

A. Yes, sir.

Q. 6. Do you recollect the circumstance of Mr. Knox and the chief and myself being here at the agency and at your house about a year ago now?

A. Yes, sir.

Q. 7. Do you recollect whether or not Mr. James Meehan was here?

A. Yes, sir; I believe he was; I am sure he was.

Q. 8. With reference to the time when I got here when did he come?

A. The same evening, I believe.

Q. 9. Did you know in his lifetime James Dean?

A. Yes, sir.

Q. 10. Did you see him here at about that time?

A. Yes, sir.

Q. 11. When?

185 A. I think I saw him with you people; he came with you people.

Q. 12. And do you know where he went from here?

A. He went up the lake shore somewhere—up towards Black Duck.

Q. 13. When?

A. That same day.

Q. 14. Did you have any conversation with James Meehan at that time about where he had come from when he came here?

A. He said he came from the boat.

Q. 15. And where was that?

A. That was up the lake somewhere, I believe, that towboat.

Q. 16. Was it in the direction in which Dean went?

A. I believe it was.

Q. 17. During the time that Knox, Moose Dung, myself, and James Meehan was here, state whether or not you had any conversation with Moose Dung and myself regarding a lease to be made to Jones?

A. I believe I did.

Q. 18. You may state whether or not you talk the Chippewa language.

A. I do.

Q. 19. You may say whether or not you interpreted between Moose Dung and myself regarding the lease to Jones.

A. I think I did; yes, sir.

Q. 20. Did you have any conversation with James Meehan about Moose Dung's making a lease to Jones?

A. Well, he said something to me about it, but I sent him to my wife; I told him I didn't care about having anything to do with either one side or the other in regards to advising Moose Dung.

Q. 21. What, if anything, did he say to you about Moose Dung letting Jones have a lease?

A. I believe he offered me a sum to assist him and not have Moose Dung sign a lease, and I told him I didn't care about having anything to do with it; the man was old enough to know his business, and he could do as he saw fit; the overseers and agents could advise him, but I wouldn't have anything to do towards advising him one way or the other.

Q. 22. Do you know whether or not he went to the agent?

A. I do.

Q. 23. How do you know that fact?

A. I went with him.

Q. 24. You recollect what time of day you went with him?

A. I think it was after dinner—about 2 o'clock.

Q. 25. Was that before or after the lease was signed?

A. It was before the lease was signed.

Q. 26. Were you present at the execution of the lease?

A. I believe I was; yes, sir.

Q. 27. In the conversation with Meehan what, if any, reason did he give for not wanting Moose Dung to let Jones have a lease?

A. I don't remember.

Q. 28. At the time of the execution of the lease by Moose
186 Dung you may state whether or not I asked Moose Dung the question if he had made any other lease of this land.

Mr. RINEHART: Objected to as incompetent, immaterial, and irrelevant; not shown to be in the presence of the complainants or either of them or their agents or attorneys.

A. Well, now, I don't remember, but I believe you did.

Q. 29. What, if anything, did Moose Dung reply?

Mr. RINEHART: The same objection.

A. He said he had; well, I don't remember the conversation to tell it word for word, and I don't like to go back on it; I don't exactly know what he did say; I can't remember; I couldn't say exactly what he said.

Cross-examination.

By Mr. RINEHART:

X Q. 1. Now, Mr. Spears, Mr. Kellogg came here the day before this lease was drawn up and made, did he?

A. No; I don't remember; I know Mr. Kellogg came here in the

forenoon some time, I think about ten or eleven o'clock, and he went fishing that afternoon, and I think it was signed the next day.

X Q. 2. Who did he go fishing with?

A. He went fishing with me and, I think, Doc. Davison.

X Q. 3. Did you and he talk any about what he was here for, Kellogg and you?

A. Yes; he told me he came up here to try and negotiate with Moose Dung for a lease with Moose Dung.

X Q. 4. Did he make any arrangement with you to act with him or for him in getting a lease?

A. No, sir; he didn't.

X Q. 5. What did he say to you about his errand in regard to getting the Jones lease?

A. I don't remember what he said; he told me to do the interpreting for him and assist him, if I could, to get this lease signed; I told him the old gentleman was here, and my wife was a far better interpreter than I was, and the old man was old enough to look out for himself; I didn't like to advise him one way or the other.

X Q. 6. When did you first see Meehan during these negotiations?

A. I think I saw Mr. Meehan that evening after I got back from fishing; that same day that Mr. Kellogg came.

X Q. 7. Did you have any conversation with Mr. Meehan about Moose Dung matters?

A. Simply Mr. Meehan talked to me that evening and told me he didn't want the old chief to make a lease or anything of the kind, and said to advise him not to, and I told him I didn't care one way or the other; I said: "He is here, and let him do as he sees fit." I says: "Before he signs that lease he will have to see the agent, and whatever the agent tells him to do he will do." I told him I didn't care to meddle with the affairs, because my position as trader didn't pay me to do so.

X Q. 8. After you saw Meehan you say Kellogg came in?

A. He was right here in the house that evening; yes, sir.

X Q. 9. Did you and he talk that evening about the Moose Dung-Jones lease any more?

187 A. Now, I couldn't say whether we did or not; I was out and in very busy at that time.

X Q. 10. Do you remember when the lease was drawn up that morning?

A. The lease was drawn up during the day; I think it was drawn up the next forenoon and read to the old gentleman here and handed to him in the afternoon.

X Q. 11. You had some conversation that morning with Kellogg when the lease was being drawn up?

A. Nothing more than he was writing the points in the lease, and so forth, and explaining to the old man the best I could; that was all.

X Q. 12. Was Meehan here at that time in the house?

A. No; I couldn't say; he was here at the time. I couldn't say

whether he was in the house or where he was. He was here at the agency, I am sure.

X Q. 13. Did you and Mr. Kellogg have any conversation about Mr. Meehan being here?

A. I couldn't say; I don't remember.

X Q. 14. Wasn't it as a fact talked over between you and Mr. Kellogg in the kitchen here that Meehan was here trying to do what he could to stop the Jones lease from being carried through?

A. I couldn't say about that, either; I don't remember.

X Q. 15. There might have been such a conversation between you and Kellogg, mightn't there?

A. I couldn't say; I think I told Mr. Kellogg very frequently, and Mr. Meehan, too, that I didn't care to meddle with the affairs. I can't remember whether it was talked over; it was some time ago, and I haven't bothered myself about the matter.

X Q. 16. You and Meehan spoke about Kellogg's being here after the lease?

A. Yes; Mr. Meehan said he was up here for a lease.

X Q. 17. And you and Kellogg talked about Meehan's being here trying to prevent, didn't you?

A. Likely we did, but I don't remember; I couldn't say; I don't exactly remember our conversation.

X Q. 18. Did you hear the conversation in the afternoon between Moose Dung and Meehan?

A. No, sir; I didn't.

X Q. 19. Where were you then?

A. I couldn't say that.

X Q. 20. Was you with Kellogg?

A. No; I was up to the store, likely, or down to the house here; somewhere around; I couldn't say.

X Q. 21. What did Moose Dung say after the lease was drawn up and read over and explained to him in the morning?

A. Well, he didn't know what to do, whether to sign or not, and wanted to be advised on it. I told him I wouldn't advise him one way or the other. Finally he said he thought he would sign. I said: "You had not better sign that lease or paper until you go up and get advice from the overseer. Whichever he tells you
188 to do you do. If he tells you to sign, sign, and if he tells you not to, don't you sign."

X Q. 22. What particular provision of the lease did he hesitate about?

A. He thought he ought to get more than they were giving him.

X Q. 23. Did he hesitate as to whether he ought to make a lease of that land at all or not?

A. He hesitate quite a little while in the forenoon, I think, after it was first read over to him once or twice. He didn't understand it. Then it was read over to him and explained and he understood it, and he said he would do just whatever the agent told him, and asked me to go up with him to the office.

X Q. 24. Did you explain it to him and tell him it was this lot one down the river?

A. Yes; I believe that was explained to him—just what it was. There was a fraction there—and the shore rights; it was all explained to him.

X Q. 25. You told him that it didn't take in anything of the section above—the square mile above?

A. I don't remember; I couldn't say whether I did or not.

X Q. 26. There wasn't anything in the lease about shore rights, was there, that you remember?

A. Now, I don't know; there was something about the shore rights, but I don't know how much. I don't know the particulars about that.

X Q. 27. Well, you knew that Meehan claimed some shore rights down there on the strip, didn't you?

A. I knew the Meehans had a lease with the old gentleman at the time.

X Q. 28. Was it talked over then at that time whether their lease with their shore rights would conflict with the shore rights on this fraction—whether they would conflict with it?

A. I don't remember that either; I don't remember whether that was explained or talked over or not.

X Q. 29. What did Moose Dung say about the Meehan business—about the Meehans' claim with him?

A. Now, I don't remember what he did say; I can remember what Moose Dung did say about their claim.

X Q. 30. He said something about Meehans being in the arrangement some way—that he had some deal with Meehans?

A. Yes; he explained about having deals with the Meehans.

X Q. 31. Didn't he say that he thought he had given Meehan a shore right along there and he didn't know whether he ought to give another man the same shore right?

A. I don't remember that at all; don't remember whether he said that or not.

X Q. 32. But he said something about the Meehans in connection with the property there—some dealings he had had with them in connection with that property, didn't he?

A. Oh, yes; he said something about that their pay, I believe, was so small and he wasn't deriving no benefit, or something like that.

X Q. 33. How did he say the pay was slow?

189 A. It was small. He wasn't getting enough for it to keep him, or something like that.

X Q. 34. He said that they had paid him something and it wasn't enough?

A. Yes; they were paying and it wasn't enough.

X Q. 35. That they were paying him for a little strip they were using along the river, and he couldn't do anything with the rest of the section. He couldn't rent it for enough?

A. I couldn't say about that—whether that was the idea or not; but all I know about it is he thought he wasn't getting enough.

X Q. 36. Did he say what they were paying him for?

A. No.

X Q. 37. What that small pay was for?

A. For the use of it and the river right or rental or something.

X Q. 38. That conversation was in the forenoon, you say, about the time the lease was drawn?

A. He talked that several times previous to that.

X Q. 39. And before he went up to see the overseer?

A. Yes; he talked that long before that.

X Q. 40. He hesitated about signing this lease and one of the reasons, when it was drawn up here, was he didn't know exactly what to do, but he thought he wasn't getting enough from the Meehans?

A. He wasn't getting enough for the lease. He wasn't getting enough money out of it.

X Q. 41. From the Meehans; and he wanted to do something else—he could get more out of it?

A. Out of Jones. He thought he ought to have \$250 instead of \$200. He thought he wasn't getting enough from either one.

X Q. 42. So he concluded, then, he would go up and see the overseer?

A. Yes; that was my advice. I told him I wouldn't advise him one way or the other. I says, "You are oid enough to look out for yourself and I won't." I said, "There is an agent here—an overseer—and you go and take his advice and whatever he tells you you do." I said, "I won't advise you to sign and I won't advise you not to sign. Do just as you see fit. That is all I have got to say about it;" and I said, "That is all I care about having to do with it."

X Q. 43. You didn't see him again, then, until evening to talk about this matter?

A. No; I didn't talk with him about the matter after that that I remember of.

X Q. 44. Until the lease was made in the evening—you was there then?

A. I was here when it was signed; yes. I took the acknowledgment.

X Q. 45. Did he say whether or not he had seen the overseer at that time?

A. I went with him to the overseer.

X Q. 46. Where was Meehan when the lease was made in the evening?

A. I couldn't say. He was here at the agency somewhere.

X Q. 47. He wasn't in the room or in the place where it was made?

190 A. I don't think he was. He was at the agency somewhere.

X Q. 48. Where was it made?

A. It was made in this room. We had a desk in this corner.

X Q. 49. At that time did Moose Dung say he had made up his mind about the matter—what to do? What did he say when he first came in in the evening?

A. He came down and was ready to sign. He said he would take the advice of the overseer. The overseer told him to sign the

lease, provided he was paid for it, because it was just so much work on paper. It was no good, he said. He would never sanction it, the agent wouldn't, and the department wouldn't, and the lease was no good, but not to sign unless he got some pay for it. Whatever he got out of it was clear profit. That is what the overseer told him in my presence.

X Q. 50. Was that spoken in Chippewa?

A. Yes.

X Q. 51. You understood it and Moose Dung did?

A. No; it wasn't. It was spoken in English to me and I interpreted it.

X Q. 52. You told him that same thing?

A. Yes, sir; I told him the same thing word for word and he took the lease in his hand and came down and was ready to sign.

X Q. 53. He told him whatever he got for signing the lease would be clear gain, anyhow?

A. Clear gain, anyway. The lease would not be approved because he wouldn't sanction it and the agent wouldn't.

X Q. 54. In the evening, when he came back—I suppose Mr. Kellogg could not understand Chippewa, could he?

A. I don't think he could.

X Q. 55. The conversation that occurred—you would tell Moose Dung what Kellogg talked and tell Kellogg how Moose Dung talked or what he said, I suppose, in order to keep the two of them informed about the subject on each other's mind? It was general conversation between you, in which you interpreted or it was interpreted between the two of them?

A. I don't know anything about whether I done the interpreting or my wife or somebody else.

X Q. 56. But it was being carried on in two languages—the thing was mutually exchanged between Kellogg and Moose Dung, wasn't it, in regard to the lease and general subjects of conversation?

A. Yes; I think so. I don't know any other way it could be translated.

X Q. 57. Kellogg was told all that went on with the Indian?

A. No; I just interpreted. They would ask me to explain a thing and I would explain it. That is all.

X Q. 58. You didn't talk Indian behind Kellogg's back?

A. No.

X Q. 59. Now, then, in the evening was there any talk about Meehan having been around kicking in the afternoon or protesting against the lease between you and Kellogg and Moose Dung—any talk about Meehan having been around trying to stop the lease?

A. I couldn't say whether there was any talk between us
191 or not in regards to it. It was known at the time that Mr. Meehan did not like to have Moose Dung sign the lease. Of course, that was understood.

X Q. 60. A common understanding?

A. A common understanding.

X Q. 61. There wasn't very many people about here, and yourself and Meehan and Kellogg were about the only outsiders here doing

any business at that time, and all of you about here understood what the two were about, and that their claims conflicted a little, didn't you?

A. Yes.

Mr. KELLOGG: Objected to as not proper cross-examination.

X Q. 62. Well, in the evening was there anything said about what Meehan had protested in the afternoon?

A. Not as I remember of; I don't remember that; well, I was busy all day, and had my store to look after, and the house here, and had a big crowd, and everything of the kind, and I let the thing go itself; I didn't have anything to do one way or the other; I tried to keep out of it all I could.

X Q. 63. What did you want to keep out of it for?

A. Being a trader like that, I hated to interfere with anything of that kind.

X Q. 64. There was some kind of conflict between Jones' people on the one side and Meehans' on the other, and you didn't want to be mixed up with it?

A. Yes; I had been friends with them and didn't like to mix myself up.

X Q. 65. You told Mr. Kellogg that was the reason you didn't want to mix up with it, on account of Meehans being customers and all that, and you didn't want to take sides?

A. Yes.

Mr. KELLOGG: I object to that as not proper cross-examination and immaterial.

X Q. 66. When was it you first told Kellogg you didn't want to take sides between him and Meehans in this matter?

Mr. KELLOGG: The same objection.

A. I don't remember.

X Q. 67. You told him at the very start, didn't you, when you was out fishing, the time he tried to get you to go in with him and help him, that you didn't want to take sides against the Meehans in the matter?

Mr. KELLOGG: The same objection.

X Q. 68. You must have told him that, or what other reason could you have had to have told him?

Mr. KELLOGG: Objected to as not proper cross-examination, immaterial, and improper.

X Q. 69. There wasn't any other reason, was there, Mr. Spears, that you gave?

Mr. KELLOGG: The same objection.

A. I couldn't say.

Mr. RINEHART: At the request of complainants' counsel, just say in the record that the witness hesitates.

A. I don't remember what I did say to him.

192 X Q. 70. I ask you whether there was any other reason that you would have had for not wanting to take sides in this matter except your friendship for the Meehans.

A. The reason would be I would hate to have the Indian come back on me and say that I advised him; I have seen so much of this I would hate to have him blame me; I didn't like to advise him one way or the other.

X Q. 71. You stated a minute or two ago that you was a trader and the Meehans were friends and customers, and that was one reason, wasn't it?

A. That was one reason.

Mr. KELLOGG: That is objected to as not a proper question, not proper cross-examination.

X Q. 72. At that time you were doing business with the Meehans, were you?

A. I have always done business with them.

X Q. 73. You were at that time, too, I say?

A. Oh, yes.

X Q. 74. And it was explained to you by Mr. Kellogg what this new venture meant, another mill and another outfit of lumbermen up in this country?

Mr. KELLOGG: Objected to as incompetent, immaterial and irrelevant, an improper question, and not proper cross-examination.

X Q. 75. Didn't he tell you that they contemplated putting in a saw-mill down there on this fraction?

Mr. KELLOGG: The same objection.

X Q. 76. The people that he represented?

Mr. RINEHART: The witness hesitates.

A. I can't remember; that is all.

X Q. 77. Well, at that time you had some conversation with Mr. Kellogg in regard to this Jones and the people represented on that side of this matter about getting some stumpage up here and making a deal for some timber, didn't you?

Mr. KELLOGG: The same objection.

A. No; I don't think I had any understanding with regards to that.

X Q. 78. No; but there was some talk about it, whether or not you could do anything for them in regard to getting timber up here back of the lake—there was conversation something about that, wasn't there?

Mr. KELLOGG: The same objection.

A. Well, I don't remember whether there was anything of that kind.

X Q. 79. Didn't Kellogg tell you they wanted to make arrangements to get stumpage back here of the lake?

Mr. KELLOGG: The same objection.

A. Now, I don't remember that, either, whether he told me about buying timber or stumpage or anything of that kind.

X Q. 80. There was some talk about getting logs up here, wasn't there?

Mr. KELLOGG: The same objection.

X Q. 81. About Jones getting logs on the Red lake?

A. Not with me that I remember of.

193 X Q. 82. Kellogg never inquired of you anything about timber up here, or logs?

A. Of course, I have no logs or timber.

X Q. 83. About whether he could get them up here, what the general state of the market was, about the outlook for getting them?

Mr. KELLOGG: The same objection.

A. So many people talk about that.

X Q. 84. As a matter of fact didn't he speak about getting forty-five million of timber back of Red lake?

Mr. KELLOGG: The same objection.

A. I couldn't say whether he said anything about that or not or whether he spoke about timber; I don't remember; the general conversation I can't tell or remember.

X Q. 85. And as a matter of fact didn't he offer you—make a proposition to you to act up here in behalf of the concern—that was after this Jones lease—in acquiring logs or timber or pine land that would be necessary for them in running their mill down below?

Mr. KELLOGG: The same objection.

A. No; I don't think he did make any arrangements.

X Q. 86. Didn't he tell you if this thing came out right that there might be a chance for you to make some money in that line that I have spoken of?

Mr. KELLOGG: The same objection.

A. I don't think he told me that; I don't think he said that another enterprise would increase the trade through the country, but I don't think he said anything about timber or pine lands.

X Q. 87. What he was speaking about, then, would be the lumber crews that would be up here and the supplies they would need from the traders; was that the idea of increasing the trade?

Mr. KELLOGG: The same objection.

A. No; something about opening up the country, which would be a help to everybody, but he didn't say anything about supplies and made no arrangements at all, because I didn't care about having anything to do with it, to tell the truth, and didn't listen to anything that was said or care about it.

Redirect examination.

By Mr. KELLOGG:

Q. 1. Mr. Spears, state whether or not you recollect, while discussing the fact to Moose Dung, the rental of the lease I was to get for Jones, you mentioned that Meehans desired a lease of this property, and what, if anything, I replied thereto.

A. That I mentioned that Meehans wanted a lease of it?

Q. 2. Yes.

A. Meehan already had a lease, as I understood it.

Q. 3. Do you remember whether or not you stated to me that Meehans desired a lease, and that I said he was out there, and that you could go out, and that if he could do better by Moose Dung than we could that I would take my hat and go home; do you remember that?

A. Yes; I believe I do. Mr. Meehan wanted to make a lease, Mr. Pat. Meehan, along in the spring, with Moose Dung, and they
194 hadn't got around to it at that time when you came up; you told Moose Dung that he could make a lease with who he pleased, provided they could make a better lease than the one you had.

Redirect examination.

By Mr. RHINEHART:

X Q. 1. That was at the time Moose Dung was hesitating to make the lease, because Meehan was not paying him enough, wasn't it?

A. Yes.

X Q. 2. And that was part of the conversation with Mr. Kellogg, wasn't it; that was at the same time that Mr. Kellogg speaks about having taken his hat; part of the same conversation, wasn't it?

A. Yes; general conversation; I remember him saying that, about he was ready to go and get his things ready to go; I remember he said something of that kind.

By Mr. KELLOGG:

Q. 1. Do you say that you told me that Meehans already had a lease or do you refer to their application which had been forwarded that never reached Washington?

A. Well, now, I couldn't say about that; I knew that they were occupants of the land at the time or were using it, or something of that kind, and Moose Dung had made some arrangements with them; whether it was a lease or a sanction of the department or anything, I didn't know about that.

Q. 2. But you didn't tell me about that?

A. I don't remember whether I told you that or not.

By Mr. RHINEHART:

X Q. 1. Might have told him that in the general conversation.

CURTIS B. WELLS, a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Kellogg:

Q. 1. Where do you live, Mr. Wells?

A. At Red Lake.

Q. 2. What is your occupation?

A. Well, I am working on a farm at the present time for Father Thomas.

Q. 3. What is your nativity?

A. I am an American.

Q. 4. And born where?

A. State of Ohio.

Q. 5. How long have you been on the reservation?

A. Well, it has been two years last June.

Q. 6. You are not a Chippewa Indian?

A. Not as I know of.

Q. 7. Do you know Moose Dung, the chief?

A. Yes, sir.

Q. 8. Do you know the Meehans, Patrick and James?

A. Yes, sir.

Q. 9. Did you ever see Moose Dung at Red Lake Falls?

A. Yes; I saw him there.

Q. 10. Do you know Theo. Le Bissonaire?

195 A. Yes; I know him.

Q. 11. Where does he live?

A. Red Lake Falls.

Q. 12. What is his occupation?

A. Storekeeper.

Q. 13. Did you ever see Moose Dung and either of the Meehans in the presence of this man?

A. Yes, sir.

Q. 14. Which one of the Meehans?

A. James Meehan, Jr.

Q. 15. And what was the occasion of your being there?

A. They was having a lease recorded.

Q. 16. How happened you to go with Bissonaire?

A. I went there as an interpreter.

Q. 17. Between whom?

A. Between Bissonaire and Moose Dung.

Q. 18. Do you interpret for the Chippewa language?

A. I did at that time.

Q. 19. Have you ever acted as an interpreter?

A. Yes, sir.

Q. 20. I will show you Ex. 15. State whether or not that is a copy of the paper that you went before Bissonaire with.

Mr. RINEHART: Objected to as incompetent, immaterial, and irrelevant; no proper foundation or knowledge on the part of the witness.

A. Well, I see some things of what I have read here that looks to be a copy of the paper the same as we had there.

Q. 21. Can you translate that into the Chippewa language literally?

A. Well, word for word, I don't know as I have got anything; but I can read it over, and did at that time, and explained it to Moose Dung so that he certainly understood it; he seemed to understand.

Q. 22. But you didn't interpret this paper in its language as it was in the paper; that you were unable to read to him?

A. Word for word, as it is there; I don't think I was able to do it.

Q. 23. You don't claim to be able to do it, as I understand you?

A. No.

Cross-examination.

By Mr. RINEHART:

X Q. 1. As a matter of fact, Mr. Wells, you understand the way or method of interpreting Indian into English and English into Indian—the general method?

A. Well, I am along with the Indians every day, and we seem to understand each other right along in common conversation.

X Q. 2. You know, don't you, as a matter of fact, that there are a large number of English words that there isn't any corresponding Indian for them?

A. I have understood it that way.

X Q. 3. And when you interpret you go about it in a way to make them understand the effect of the thing rather than sometimes getting the exact word, don't you?

A. That is the way I have done.

X Q. 4. And when you interpreted this lease to Moose Dung you did it just as honestly and faithfully as you could, didn't you?

196 A. I meant to explain it to him as well as I could.

X Q. 5. Truthfully?

A. Yes, sir.

X Q. 6. That it was a lease of ten feet of shore rights up that river. Didn't you tell him that this would give them the right to go on ten feet of his land up there, so that they could string booms in the river?

A. That is what I meant to tell him; yes, sir.

X Q. 7. And that is what you did tell him as near as you could come to it in the Chippewa language?

A. Yes, sir.

X Q. 8. And you told him how much money they were going to pay him in the lease for that right that they got there, didn't you?

A. Yes; the amount mentioned in the lease.

X Q. 9. And you told him how many years or how long it would run in the future; that they would have a right to do that there, did you not?

A. Yes, sir.

X Q. 10. And you explained to him how much shore from the

water up that they wanted to use with the water right, didn't you, under the lease?

A. Ten feet; yes.

X Q. 11. Put it into whatever he understood to be ten feet in Chippewa?

A. Yes.

X Q. 12. And that it commenced way down the Red Lake river as far as that first land went, and run up along the river, up along the whole shore line of his land there; told him what it was—the ten feet, didn't you?

A. Ten feet, as far as his land went, up and down.

X Q. 13. Where did you live at that time?

A. Well, I lived at Red Lake Falls—that is, I had a farm near Red Lake Falls; I was doing business in town.

X Q. 14. Had you ever been up along the Red lake at the Red lake and Thief river?

A. No.

X Q. 15. When was you up there?

A. Well, I was up there previous to the leases being made, and been there since.

X Q. 16. About the making of the lease, did you go up there?

A. No.

X Q. 17. You didn't have any talk with Moose Dung up at Thief river about making the lease?

A. I don't recollect of it.

X Q. 18. Did you see Moose Dung more than once about making a lease?

A. Yes, sir; I think he came out and into my place there at different times while the lease was being made.

X Q. 19. And talked with you about it?

A. Yes.

197 X Q. 20. And after you explained to him in Chippewa, as near as it was possible for you to explain the meaning of this instrument, why, he said he was satisfied with it, didn't he?

A. Yes; he seemed to be satisfied with it at that time.

X Q. 21. That was before the village of Thief River Falls was in existence, wasn't it?

A. Well, I think there was a few houses there at that time.

X Q. 22. That was before the Meehans built their mill, wasn't it?

A. I think it was.

X Q. 23. And before the railroad came in there?

A. I think it was.

X Q. 24. And after this conversation occurred, when James Meehan, Jr., and Bissonaire and yourself and Moose Dung were there, Moose Dung touched the pen to the lease, did he, or make his mark?

A. Yes.

X Q. 25. And you signed your name as a witness to the lease?

A. Yes; my memory don't serve me for certain, but I suppose it is likely I did.

X Q. 26. If it bears on the lease your name, then you would be satisfied that you did?

A. Yes.

X Q. 27. And Bissonaire signed it, too. He took the acknowledgement as notary public, didn't he?

A. He must have; yes.

X Q. 28. And if his name appears on there you would be satisfied in your own mind that he signed as a witness, too?

A. Yes, sir.

Redirect examination.

By Mr. KELLOGG:

Q. 1. You don't know how much or how little Moose Dung understood of that?

A. Well, it would be hard for me to tell another man's thoughts.

Recross-examination.

By Mr. RINEHART:

X Q. 1. Did you understand what Moose Dung said to you when he talked to you, all the time?

A. Yes.

X Q. 2. How long had you been living at Red Lake Falls or near there?

A. I have been living at Red Lake Falls, there and here, something like 15 years.

X Q. 3. And you during that time associated with the Indians usually?

A. More or less.

X Q. 4. And carried on general conversations with the Chippewa Indians whenever you met them and carried on conversations?

A. Yes.

X Q. 5. And these conversations between you and the Chippewa Indians always resulted in your understanding and conveying your ideas back and forth to each other?

198 A. Well, it seems we understood one another; slept in the house with one a good many years, and it seemed we understood one another right along.

By Mr. LEE:

Q. 1. Isn't it a fact Moose Dung came down to Red Lake Falls purposely to execute a lease for the Meehans?

A. I couldn't say what brought him there.

Q. 2. Didn't you know of his coming once before and failing to execute it, and coming again?

A. I couldn't recollect that. I know he used to make trips down there sometimes from Thief river to Red Lake Falls before and after.

Adjourned to meet at Thief River Falls on Wednesday, July 24th, 1895, at one o'clock p. m.

Title of Cause.

Depositions of James Powers, Hans Langseth, John M. Whitman, Carl Kurtzmer, Day F. Stacy, Chief Moose Dung, and Bay-mway-bin-ace, taken on behalf of the respondent, at the Great Northern hotel, at Thief River Falls, Minnesota, on Wednesday, July 24th, 1895, before Richard A. Mabey, special examiner in this cause, pursuant to a stipulation and order of court on file herein.

Present: On behalf of the respondent, James A. Kellogg, Esq.; on behalf of the complainants, Orville Rinehart, Esq.

Thereupon the following proceedings were had, to wit:

JAMES POWERS, a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Kellogg:

Q. 1. What is your age, occupation, and residence?

A. 32; river boss and ice dealer.

Q. 2. Where do you reside?

A. Thief River Falls, Polk Co.

Q. 3. How long have you resided here?

A. Three years and seven months.

Q. 4. Do you know where lot 1, section 34, Moose Dung's reservation, is located?

A. No; I couldn't say as to the lot. I never paid any attention to it.

Q. 5. Do you know where Meehans have built a house and barbwire fence on the bank of the river down here?

A. Yes, sir.

Q. 6. State whether or not you ever had any building on that land.

A. I had an ice-house built on that land about—I wouldn't be positive whether any of it extended on the other side of the fence now or not.

Q. 7. What year did you build that there?

A. The year 1892, I believe.

Q. 8. With whom did you make the arrangements under which you built it there?

A. Chief Moose Dung.

Q. 9. Where did you get the ice that you put in the house?

A. Out of the river right there.

Q. 10. What river?

199 A. Red Lake river.

Q. 11. State how you got the ice from the river into the house.

Mr. RINEHART: Objected to as incompetent, immaterial, and irrelevant, and I move to strike out the answer.

A. A slide extending from the house into the river.

Q. 12. If the house was not located on the ten feet of land next to

the water's edge, did you cross that land in getting ice from the river to the house?

A. Yes, sir.

Q. 13. And how long did that house continue to be there?

A. Two years successively—that is, used it for two seasons, rather.

Q. 14. Was it there in the year 1894?

A. I moved it in the year 1894; in the fall.

Cross-examination.

By Mr. RINEHART:

X Q. 1. And you obtained your right along on the premises, you say, from Moose Dung?

A. Yes, sir.

X Q. 2. Where did Moose Dung live at that time, do you know?

A. I couldn't say; he was away part of the time and part of the time he was at the lake.

X Q. 3. What year did you say you obtained the lease?

A. 1892, the first lease; the second in 1893.

X Q. 4. Do you know about his having a house up near the mouth of Thief river?

A. No; I didn't know about that.

HANS LANGSETH, a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Kellogg:

Q. 1. Where do you live?

A. Thief River Falls.

Q. 2. What is your age and occupation?

A. Age, 36; general merchant.

Q. 3. And how long have you lived in Thief River Falls?

A. Eight years.

Q. 4. Do you know this lot 1, section 34, a portion of Moose Dung's reservation, immediately east of the city and on the river bank?

A. Yes, sir.

Q. 5. State whether or not you had any building on that land.

A. I have had a boat-house standing there.

Q. 6. When was it built there?

A. 1893.

Q. 7. And how long did it continue?

A. It is there now.

Q. 8. And about how far from the water's edge?

A. I couldn't tell for certain; it is pretty close.

Q. 9. So nearly as you can estimate it?

A. Well, it is only a couple or three feet back from the bank—from the top of the bank.

200 Q. 10. And with whom, if anybody, did you make the arrangement under which you put it there?

A. Well, I asked Moose Dung if I would be allowed to build it there and he did not answer me, so I put it there anyhow.

Q. 11. Did you go across the land between the boat-house and the water in going to and from the boat-house?

Mr. RINEHART: Objected to as incompetent, immaterial, and irrelevant.

A. Well, yes; I cross the bank and take the boat into the water right from the boat-house.

Q. 12. Now, how frequently were you there upon that land along the river during the time you used the boat-house?

Mr. RINEHART: Objected to as immaterial.

A. I use it now and then; sometimes every Sunday and sometimes more frequently.

Q. 13. What, if anything, else was along the edge of the water across this lot one; building, or structure of any kind?

A. The ice-house has been there.

Q. 14. Anything else?

A. Well, Eberhart had a little workshop there.

Q. 15. Where was that?

A. Just where that house of Meehan's stands now.

Q. 16. How near the water's edge?

A. It was two or three feet back from the bank.

Q. 17. Within the ten feet along the water's edge?

A. I couldn't say for certain; it was as close to the river bank as they could build it.

Q. 18. Is that all that was in there?

A. I can't remember anything else in there.

Q. 19. Did you ever see anybody using it for any purpose along there—the lands?

A. Well, they have been using it for a sail-boat landing; that is all I can think of.

Q. 20. Who?

A. Pete Eberhart.

Cross-examination.

By Mr. RINEHART:

X Q. 1. Pete Eberhart lands his boat at your boat-house?

A. At his boat-house; yes.

X Q. 2. That was not your boat-house?

A. No; it wasn't a boat-house; it was kind of a workshop he had.

X Q. 3. How far was that from your place?

A. I can't tell exactly; it must be about, probably, 100 feet.

X Q. 4. There was piling out in the river in front of your boat-house, wasn't there, at that time?

A. In 1893?

X Q. 5. Yes; piling driven in along there.

A. I think so; I guess I have used them from the boat-house all the time; I can't remember certain.

201 X Q. 6. And there was booms strung along there when there was logs in the river, wasn't there?

A. Since 1893?

X Q. 7. Yes.

A. Yes; I think so.

X Q. 8. And there was room to go down between the shore and boom and get into your boat-house—to go down the river between the piling and shore and go down to your boat-house a passageway, wasn't there?

A. It has been for the last year; I know that; I don't remember how it was the first year.

X Q. 9. How big a boat-house did you have there?

A. It is only 16 feet long and about four feet wide; just had a rowboat in it.

X Q. 10. That is, you could row the boat right into it?

A. No; I pulled it out.

X Q. 11. Didn't you get any permission from Moose Dung to go on there?

A. No.

X Q. 12. Or anybody else?

A. No.

X Q. 13. Never asked anybody to go on?

A. I asked Moose Dung.

X Q. 14. You never asked anybody else about going on?

A. No.

X Q. 15. Never paid anybody any rent for the place, did you?

A. No, sir.

Redirect examination.

By Mr. KELLOGG:

Q. 1. You didn't know that anybody else claimed any rights or interest there, did you?

A. No.

JOHN M. WHITMAN, a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Kellogg:

Q. 1. What is your age?

A. 68.

Q. 2. Your occupation?

A. Well, I do carpenter-work when I do anything.

Q. —. And your residence?

A. Thief River Falls.

Q. 4. How long have you resided here?

A. 19 years in June.

Q. 5. Do you know the water front along lot one, section 34, of Moose Dung's reservation?

A. Yes, sir.

Q. 6. You may state what, if anything, has been on or along that land on the water front during the time that you have resided here, so far as you have observed.

202 A. Well, the first thing, or about the first, I wouldn't say positive which, whether this boat-house was put there before Eberhart built that little shanty or not; I wouldn't be positive which, but it was about the same time, I think.

Q. 7. When was that?

A. It must have been about two or three years ago.

Q. 8. What boat-house do you refer to?

A. Mr. Langseth's, and Mr. Wright has one right by the side of it.

Q. 9. Was there anything else along or on there?

A. There was an ice-house built there.

Q. 10. When?

A. In 1892, I think, he built it.

Q. 11. Now, what other structure was on that land within ten feet of the shore, or for what purpose was it ever used, within your observation, during that time?

A. I don't know of anything being there except these buildings, except the ones that Mr. Meehan has built there as a shanty on the river bank.

Q. 12. The one that was built in December last?

A. Yes, sir.

Q. 13. How frequently were you along there or on those premises?

A. Well, I have been there a good deal of the time; I once had a portion of that rented from Mr. Moose Dung as a pasture and had it as a pasture at the time Mr. Eberhart put his little building there, and they commenced to land the boat there and I opened my fence for them to get down with teams. I rented it from Mr. Moose Dung for several years—a strip of pasture.

Q. 14. What year did you first rent it?

A. Well, it was about—it was the same year that they built this mill here.

Q. 15. Can you tell how many years ago?

A. It must be seven or eight years ago I first rented it.

Q. 16. And how long did you continue to rent it?

A. I think I paid him for some three years for the use of it.

Q. 17. Can you say whether or not you rented it in 1890 and 1891?

A. No, sir; I couldn't.

Cross-examination.

By Mr. RINEHART:

X Q. 1. Do you say you rented this land from Moose Dung?

A. Yes, sir.

X Q. 2. Seven or eight years ago?

A. I think it was that long.

X Q. 3. Where was Moose Dung at the time you rented it from him?

A. Well, he was about here.

X Q. 4. Where was he living?

A. He was off and on north of the river; he had a house up there.

X Q. 5. Living on the land on the Moose Dung section?

A. Yes, sir.

X Q. 6. You rented this lot 1 from him?

A. I rented this fraction here, a portion of it, not all of it.

203 X Q. 7. Do you know that there was some piling put out in the river at one time?

A. Yes, sir.

X Q. 8. Do you know when they were driven?

A. I think they were driven some time in March two years ago, if I am not mistaken.

X Q. 9. They were driven along the shore of this fraction, out from the shore fraction?

A. They were driven out in the river.

X Q. 10. You knew who drove the piling at the time they were driven, didn't you?

A. Mr. Meehan's men were driving the pilings.

X Q. 11. What did you rent this land for?

A. For pasture.

X Q. 12. What kind of a lease did you have from Moose Dung?

A. I had no lease at all; I got the interpreter—Mr. Brazel done the interpreting, and I paid him so much for the use of it, a certain strip that I had that I put a wire fence on.

X Q. 13. You put a wire fence around the part that you used?

A. Yes, sir.

X Q. 14. When was the last year that you used any of it for pasture?

A. Well, the last I used any of it was a year ago this last summer.

X Q. 15. You turned your cattle in there, inside the wire fence, onto Moose Dung's land?

A. Yes, sir; I had some horses and I used to turn them in.

X Q. 16. At that time you were a tenant of Moose Dung?

A. Well, I paid him for the use of the land.

X Q. 17. What part of the land was your wire fence on?

A. Well, it run from the corner or near the corner of Third street.

X Q. 18. That is, Thief River Falls?

A. And run down the river.

X Q. 19. Did you take in the whole fraction?

A. No, sir.

X Q. 20. About how many acres?

A. I don't know exactly how many acres; I should think there was somewheres pretty near three or four acres.

X Q. 21. You didn't go to the water's edge, your wire fence?

A. Yes, sir; down in the water; there is a piece down there yet; I saw it the other day.

X Q. 22. That was on the upper end of the fraction?

A. No, sir; it is on the lower end.

X Q. 23. Down the river?

A. Yes, sir; right opposite—well, it takes in where Mr. Meehan's little house is and where this boat-house is and clear down to the point; I have a barn right down there, and my stock would go to the barn.

X Q. 24. And that was to keep the stock from going further up the river?

A. To keep them so I would know where they was.

X Q. 25. When did you build the fence there?

204 A. Well, I couldn't say just exactly when it was that I did build it, but it was at the time that I made the arrangement with him and about the time we was building this mill here, Mr. Kurtzmer's.

X Q. 26. You made a new agreement with him each season for the pasturage?

A. Yes, sir.

X Q. 27. How much rent did you pay him a year?

A. I think the first year I paid him \$4, I think it was.

X Q. 28. And after that how much did you pay him?

A. I think the last year I paid him \$2.

CARL KURTZMER, a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Kellogg:

Q. 1. What is your age?

A. 53.

Q. 2. Your occupation?

A. Miller.

Q. 3. Your residence?

A. Thief River Falls.

Q. 4. And how long?

A. Eight years; since 1888; seven years.

Q. 5. Do you know the premises known as lot 1, section 34, in Moose Dung's reservation?

A. Yes.

Q. 6. Do you know what has been, if anything, along the water's edge of that lot within the space of ten feet from the water?

A. I never saw anything; I saw a shanty close by it.

Q. 7. Besides the shanties what else, if anything, was it used for?

A. I saw the boat going there, Eberhart's boat; he went there sometimes with the boat, and Eberhart, he works on it; he had some lumber near the river.

Q. 8. Do you know the Meehans, P. and J. Meehan?

A. Yes.

Q. 9. What, if any, use did you ever know or see them put that to?

Mr. RINEHART: Objected to as incompetent, immaterial, and irrele-

vant; no proper foundation shown; no knowledge shown to be in the witness.

A. If I ever see the Meehans have anything there? No.

Q. 10. Or make any use of it?

Mr. RHINEHART: The same objection.

A. No.

Q. 11. How frequently were you along there?

A. Four or five times in a year.

Q. 12. Did I understand you to say that you were interested in the dam—water power?

A. Yes. I built it.

Cross-examination.

By Mr. RHINEHART:

X Q. 1. You know that P. and J. Meehan operate a saw-
205 mill in Thief River Falls, I suppose?

A. Yes, sir.

X Q. 2. And you have seen logs going down the Red Lake river to their mill during the time that they have been operating that mill?

A. Yes.

X Q. 3. Have you ever seen any booms strung in the river to hold those logs?

A. Yes, sir.

X Q. 4. Have you ever seen any pilings driven in the river to string the booms to?

A. Yes.

X Q. 5. When did you first see logs in the river running to Meehans' mill?

A. I don't know exactly now. About three years ago, I think; I couldn't say exactly when. I saw the first log coming, anyhow.

X Q. 6. When the first logs came down, there was no string boom along up the Red Lake river, was there?

A. No; he had some ropes from one side to the other.

X Q. 7. From the Moose Dung fraction over to the other side of the river?

A. No; near the dam here.

X Q. 8. After that there was pilings driven in the river up along the Moose Dung fraction, wasn't there?

A. No; I never saw it there. I saw it about 25 feet from the shore.

X Q. 9. Yes; along the shore, about 25 feet from the shore?

A. Yes.

X Q. 10. And there was booms strung along this piling?

A. Yes.

X Q. 11. And logs inside of the boom?

A. Yes.

X Q. 12. When is the first that you ever saw those things there?

A. It was about two years ago or two and a half. I saw him driving the piles, you know.

X Q. 13. Did you ever see any logs lying in the river before the piling was out in that part of the river?

A. No.

X Q. 14. You say that you went up there sometimes four or five times a year in the last two or three years?

A. Yes.

X Q. 15. You never saw any of the Meehans on the logs or on the boom, you say?

A. Oh, I saw them a year ago and this year; yes, sir. They hadn't so many logs to fill up there, you know.

X Q. 16. Last year and this year you have seen them working along these booms that are strung along this piling in front of this fraction?

A. Yes.

X Q. 17. Don't you remember the first year that the Meehans had logs in the river of seeing them backed up or filled up clear up to the middle of Thief river at one time?

206 A. No; I never saw this.

X Q. 18. Do you remember when the Viking steamboat was built that runs on the Red Lake river?

A. No; I couldn't tell. I think the Viking was built from Howe's first old boat, but I am not sure.

X Q. 19. Do you remember the circumstances of the Viking running down to the mouth of Red lake and Thief river and the river below being full of logs the first spring after the Viking was built?

A. I know I came once with a wagon and we went towards the spiles, and we had to stop about half way; we couldn't get through, and then we went on the shore along in. We went right in the middle of the river along and backed in again to the shore.

X Q. 20. And there was logs lying from one shore of the river to the other at that time, wasn't there?

A. No; we went over with the boat.

X Q. 21. You never was up there when the boat stopped above the logs?

A. No; I was up there when we came with the boat, and there was some logs stopped by the pilings, and after we was through there we went right through, you know.

X Q. 22. You know a dam in the Red Lake river at Thief River Falls, do you?

A. My wife owns it.

X Q. 23. And that dam causes a flowage from the land back to the dam, don't it?

A. Yes.

X Q. 24. Up along the fraction, what is known as the Moose Dung fraction and Moose Dung section, up towards the middle of Thief river?

A. Yes.

X Q. 25. When you put that dam in down there did you make any arrangements with the owners of the land about that flowage?

A. Yes.

X Q. 26. Did you make any arrangement with Moose Dung?

A. I got a contract with him.

X Q. 27. Was Moose Dung living on the land then; did he have a house there?

A. I think he had a house there; yes, sir.

X Q. 28. How did you come to go to Moose Dung to get a contract with him for flowage?

A. I had the county surveyor here to find out which land I should overflow, and he gave me a map of it, and I overflowed two and a half acres of Moose Dung, and then I sent here to Red Lake Falls. I live at Red Lake Falls, and I sent to Moose Dung and he gave me somebody to explain it, to talk for him, in Red Lake Falls, and then we made a contract, and I told him I wanted to build a dam there, and he has got two and a half acres, and I wanted to know if he wouldn't do anything. He said he would give me 20 acres of land, but he couldn't get no title, and I say, "How much you want for the overflowage, not for the land, just for the overflowage?" and I paid him \$80, and I promised him when he gets sick and needs some help I help him along.

X Q. 29. Did you have any correspondence with the United States officials about it?

A. No. These papers I sent to the agent at Red Lake, when he said he can't do anything. These two and a half acres don't amount to anything. If it comes to a quarrel, all I can do is to pay for it.

X Q. 30. Did you see the Meehans at the time they drove their pilings in the river—the men?

A. Yes.

X Q. 31. That was in the winter, wasn't it?

A. In the spring.

X Q. 32. Was the ice in the river then?

A. Yes.

X Q. 33. When did you first see them driving piles—what time in the spring?

A. From the middle of March to about the end of March.

X Q. 34. Where did they commence to drive—which end of the fraction?

A. I see him drive these piles for the piers first, and went up.

X Q. 35. Started down the river and went up the river?

A. Yes, sir.

X Q. 36. He commenced the lower end of the fraction and went up along the Moose Dung section?

A. He drove pretty near every spring. He came up in the spring and drove them back, and I can't recollect which way. One year he drove the piles for the piers.

X Q. 37. Did you see him draw his piling before he drove it?

A. I saw the piles brought there—yes; on the ice.

X Q. 38. Up river or down river?

A. He had them on the shore, I think. I am not sure where he got them from.

X Q. 39. Did you see any of them on the shore before he put them in the river?

A. No; I think he cut them all on the ice.

X Q. 40. What spring was that?

A. Two years ago, I know.

X Q. 41. The spring of 1893?

A. 1893. I saw him drive two winters—last winter and a year ago.

X Q. 42. He drove from the ice, you say; had his pile-driver on the ice?

A. Yes.

X Q. 43. Did you see him as he was driving along the fraction up river?

A. Yes; and that is so far as I could see from my property. I saw him driving.

X Q. 44. Did you ever see them going onto the ice with their tools?

A. I saw Pat. Miles by the pile-driver, and Mr. Meehan here—I saw him with the men.

X Q. 45. These piling are pretty close into this side of the river, ain't they?

208 A. Yes.

X Q. 46. 25 feet?

A. I don't know. It is nearly 25, I think.

X Q. 47. On the other side there is a good many stumps stick up through the ice?

A. He only got one row of piles.

X Q. 48. But there are stumps on the other side of the river, through the ice?

A. Yes; sure. When the water is down you see them.

X Q. 49. Do you know which side of the river they came from to do their work on the ice?

A. From the other side.

X Q. 50. Straight across?

A. Yes.

A. Yes; hauled the pile-driver through the stumps on the ice.

X Q. 51. You saw the stumps which held the pile-driver? You saw the stumps on the ice?

A. That I don't know—yes; I heard him on the other side. He hauled them from the other side.

Redirect examination.

By Mr. KELLOGG:

Q. 1. The piers by which you say they drove the piles are the piers in the river below?

A. Below here, near the dam.

Q. 2. Not opposite this land?

A. No, no.

X Q. 25. When you put that dam in down there did you make any arrangements with the owners of the land about that flowage?

A. Yes.

X Q. 26. Did you make any arrangement with Moose Dung?

A. I got a contract with him.

X Q. 27. Was Moose Dung living on the land then; did he have a house there?

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Redirect examination.

By Mr. KELLOGG:

Q. 1. The piers by which you say they drove the piles are the piers in the river below?

A. Below here, near the dam.

Q. 2. Not opposite this land?

A. No, no.

Recross-examination.

By Mr. RINEHART:

X Q. 1. The pilings are driven opposite this land all the way up?

A. The piling is all the way up.

X Q. 2. The booms are strung all the way up clear to the mouth of Thief river?

A. These booms are where the pilings is.

X Q. 3. Those string booms have been in there for about two years, you say?

A. That is what I think.

DAY F. STACY, a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Kellogg:

Q. 1. What is your age?

A. 46.

Q. 2. Your occupation?

A. Civil engineer.

Q. 3. Residence?

A. Thief River Falls.

Q. 4. Do you know the premises known as lot one, section 34, of Moose Dung reservation?

A. Yes, sir.

Q. 5. That is the piece of land between the city plat and the river?

A. Yes, sir.

209 Q. 6. Do you know where the piling is driven in the river opposite that lot one?

A. Yes, sir.

Q. 7. Have you ever made measurement of the distance from the shore to those pilings along that lot one?

A. Yes, sir.

Q. 8. Can you say what the distance is between the shore line and that piling?

A. It varies considerably; the furthest piles are 267 feet, and the nearest are 35 feet, except some that was driven last December, which are three or four feet from the shore.

Q. 9. How many are 35 feet?

A. There is five or six, I think.

Q. 10. How many are 200 feet?

A. I couldn't tell without referring to the map and record.

Q. 11. Say whether or not there are strung along those pilings booms.

A. Yes.

Q. 12. Upon which side of the booms do the logs in the river float?

A. On the east side.

Q. 13. Toward or from lot one?

A. Opposite lot one.

Q. 14. Between the piling and lot one?

A. No; on the opposite side.

Cross-examination.

By Mr. RINEHART:

X Q. 1. Do you know the channel of Red Lake river?

A. I know the contour of the present pond.

X Q. 2. Did you know the contour of the river before the pond filled?

A. I never saw it, sir.

X Q. 3. You know where the current of the river is?

A. I couldn't say; the current is deadened by the dam.

X Q. 4. Do you know the depth of the river in any part?

A. Yes, sir; about 14 feet.

X Q. 5. Where is that?

A. Opposite the boat-house.

X Q. 6. Do you know where what they call Moose Dung's fraction is?

A. Yes, sir.

X Q. 7. The depth of 11 or 12 feet is along that fraction?

A. Yes, sir.

X Q. 8. What is the depth across on the other side of the river?

A. I couldn't tell you.

X Q. 9. Have you ever measured it?

A. Only at the pilings.

X Q. 10. What is the depth of the pilings?

A. Some places it is 11 feet; I never measured it only once or twice there; 11, 12, or 14 feet one place I found.

X Q. 11. Those that are 200 feet from the shore or up?

A. Near the upper end?

210 X Q. 12. Near the mouth of Thief river?

A. No, sir; this side; this fraction doesn't run to Thief river.

X Q. 13. The pond widens out considerably?

A. Yes, sir; there is a pond at the north end of lot one.

X Q. 14. You have seen steamboats operated on the Red Lake river on the Moose Dung section?

A. Yes, sir.

X Q. 15. On which side?

A. On the west side.

X Q. 16. On the Moose Dung fraction?

A. Usually; sometimes, a year ago this spring, they run from the boom and went up on the east side; that is up the center of the river.

X Q. 17. The pilings are closer to the bank or shore on lot one, on the lower end of lot one, than they are up there?

A. Yes, sir.

X Q. 18. Do you know where the steamboat usually landed?

A. One was on lot one; yes.

X Q. 19. Where the steamboat landed the pilings were further away from the shore than they were at the other place?

A. Yes, sir; where the steamboat landed they were further away from the shore than they were at the narrowest places; six or seven feet somewhere; I couldn't tell you exactly.

X Q. 20. Logs run down through that side and through the sluice and Kurtzmer's dam and down the river, too?

A. That is supposed to be the logway.

X Q. 21. Have you ever seen the steamboat run down the center of what is now the water of Red Lake river?

A. I saw it run down there a year ago last spring.

X Q. 22. Down through the middle?

A. Yes.

X Q. 23. At that time the pilings were driven the same as they are now?

A. Yes, sir.

Redirect examination.

By Mr. KELLOGG:

Q. 1. Do I understand you to say that the steamboat during last spring ran between the piles and the shore of lot one?

A. It did the 4th of July and several other times.

By Mr. RINEHART:

Q. 1. Who employed you to take the depth of the water and the measurement of the pilings?

A. Mr. Ray W. Jones.

Chief Moose DUNG, a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Kellogg:

The witness was sworn and examined through an interpreter, United States Deputy Marshal Morrison, who was also duly sworn as an interpreter.

Q. 1. What is your name?

A. Mays-ko-ko-noy-ay; that is what they call me.

211 Q. 2. What other name, if any, are you called?

A. Moose Dung is my other name that they call me.

Q. 3. What is the Chippewa name for Moose Dung?

A. Mon-si-moh.

Q. 4. Did you know the old Chief Moose Dung in his lifetime?

A. Yes, sir.

Q. 5. What relation are you to him, if any?

A. He was my father.

Q. 6. How old are you?

A. He says he don't know how old he is.

Q. 7. When, if you remember, did your father die?

A. I don't know.

Q. 8. How many brothers and sisters have you living?

Mr. RINEHART: Objected to as incompetent, immaterial, and irrelevant.

A. He says there was four of us in the family, and he goes on to say that so many died from the first wife of his father; that she is his mother; and the second wife there has been a boy or a girl that was born, and there is still four living from the children—that is, his nephew and nieces; then come, he says, on the second wife, he had a boy and a girl, and he says that is the other boy over there, making six.

Q. 9. Give the names of your sisters if any you have living.

A. Bay-sha-bun-noke is the woman that is living here across the river, and O-she-now-ah-sheak.

Q. 10. Are those all the sisters or children of his father?

A. Those are the only two that there is—sisters.

Q. 11. How many, if any, brothers have you living—children of his father?

A. There isn't any.

Q. 12. How many children of his father's children are living, their parents being dead?

A. There is only three of us living.

Mr. LEE: Mr. Kellogg asks for grandchildren and he understands children.

The INTERPRETER: The children of his father's children who are dead—that is, who of his father's children have children living?

Mr. KELLOGG: Yes; ask him how many grandchildren he has.

Mr. RINEHART: Yes; whose parents are dead.

A. There is three.

Q. 14. Their names, please.

A. Ne-gone-bin-ace is one and Bay-mway-bin-ace is the next and Ay-sin-e-wub-eak is the other one.

Q. 15. State whether or not you had a transaction at Red Lake Falls with James Meehan, Jr., and Curtis B. Wells, as interpreter, regarding a paper.

A. Yes, sir.

Q. 16. State, if you please, who interpreted between you and Meehan.

A. He says he don't know the man's name, but he would know it if he heard it mentioned.

Q. 17. Can you say whether or not it was Curtis B. Wells?

212 A. That is the man.

Q. 18. State your recollection and understanding of that transaction.

Mr. RINEHART: Objected to as incompetent, immaterial, and irrelevant, calling for the conclusion of the witness as to his understanding of the transaction. The transaction, if in writing, speaks for itself.

A. He says that he wanted to rent or hire four feet above the
29—237

water on the river, so that the men that are working can walk on the bank of the river.

Q. 19. State whether or not that was the statement made to you by Meehan through the interpreter.

A. He says, I am going to tell just as I understood the interpreter. He said, I wouldn't have done it if it hadn't been for the interpreter. He was the only one that told me to do it and I am going to tell just what the interpreter told me.

Q. 20. Please do so.

A. He says, I went off to work and came back. He says, Mr. Wells told me to come in and I had better rent the land.

Q. 21. Can you read or write the English language or any language?

A. No, sir.

Q. 22. Was the paper which it was claimed you signed interpreted to you by any one?

Mr. RINEHART: Objected to as incompetent, immaterial, and irrelevant, no paper shown claimed to have been signed to which the witness' attention was called in this examination.

Mr. KELLOGG: If you insist on that, you should have your exhibit here in the hands of the commissioner.

Mr. RINEHART: I insist on the objection.

Mr. KELLOGG: Mr. Rinehart, I call upon you to produce your exhibit.

Mr. RINEHART: They are all on file with the examiner as part of the case and out of the power of the complainants to produce.

Mr. KELLOGG: It is apparent that they are with the clerk of the court.

Q. 23. Go on.

A. Yes, sir, he said; and goes on to tell what the men told him. He says, I was on my way home after I got through work and the interpreter told him that these men wanted to see him. He says, The man didn't want to pay me enough; he wants to pay me a little, and so, he says, I don't know anything to do anything. I don't know as I can do anything; that is the words. He says, You are poor man. He says, And what little you will get from your rent here will help you along. He says, If there is anything wrong with this paper, I will tell you so. He said, There is one thing that I will do. He says, I want my pay every year in advance, and then he said the ten years that they wanted to rent the land from me. I told them—they said they will pay me every year in advance, and if I see that there was going to be any trouble or anything wrong about the lease that I wouldn't take the money, and that would end the rent of the land; just as soon as he said he wouldn't take the money the time would be up.

213 Q. 24. Have you refused at any time to take the money?

A. He says, I have always taken my pay so far, but, he says, I haven't this year yet.

Q. 25. Was it so stated in the lease that you might refuse to take the rent and end the lease?

A. He says, I don't know anything about what was in the lease; he said the lease was made and I didn't know anything about it.

Q. 26. Did you advise with anybody other than Wells, or talk?

A. No, sir; he said, That is all the transaction there was, just as I stated; that is all the interpreter told me.

Q. 27. State whether or not you understood this to be embodied in the lease or written in the lease.

Mr. RINEHART: Objected to as incompetent, immaterial, and irrelevant.

A. Yes, sir; that is the way he understood the lease when he signed it and accepted the money.

Cross-examination.

By Mr. RINEHART:

X Q. 1. At the time that you made this lease to these men down at Red Lake where were you living?

A. I was living right here.

X Q. 2. On a piece of land?

A. Yes, sir.

X Q. 3. Do you own that section of land, a part of which you leased to these men at that time?

Mr. KELLOGG: Objected to as incompetent, immaterial, and irrelevant; not proper cross-examination; calling for the conclusion of the witness.

A. Yes, sir; he said, It is mine.

X Q. 4. The rent of this land in advance each year came due in the month of October, didn't it?

A. He said he doesn't know just what month it was, but he remembers he went threshing, and on his way back they talked to him.

X Q. 5. In the fall of the year—the money would come due each year?

A. Yes, sir.

X Q. 6. The money that was due you for the rent commenced last fall up to the next fall is paid, isn't it?

A. Yes, sir.

X Q. 7. Have you ever told either of the Meehans, who hold the lease from you, that you wouldn't take any more rent from them; told them that you wanted to end the lease?

A. No, sir; he says, I haven't.

X Q. 8. Have the Meehans paid you any money besides what is due you for this present year?

A. Yes, sir; he said they paid him some money besides the rent.

X Q. 9. How much?

A. He says he don't know; he says now that he got \$100 besides.

X Q. 10. At the time this lease was made you was told that it was for the shore right up along the section, up along the river?

214 A. He says at the time the lease was made they only leased up to the mouth of the Thief river, as far as the Red Lake river came in.

X Q. 11. From the lower end of lot one?

A. Yes, sir.

X Q. 12. How much money did they tell you they would give you a year for the use of that land?

A. \$25 a year.

X Q. 13. Did you agree to that?

A. He says, I didn't want to take that; I said it wasn't enough, but the interpreter told me that that was good pay.

X Q. 14. And finally he agreed on it, didn't he?

A. Yes, sir; he says he finally took the money.

X Q. 15. And then you touched a pen and made your mark on a paper?

A. Yes, sir.

X Q. 16. And there were two men there at the time, weren't there, besides Meehans?

A. Well, he says he doesn't recollect, but he says there was some men around there; he says he is sure there was one man around there; he says the interpreter was there also, and there was another man that was there that endorsed the papers up.

X Q. 17. And the man that endorsed the papers up was there when you put the mark on it?

A. Yes, sir.

X Q. 18. Was that man's name Len Bissonaire?

A. He says he don't know his name.

X Q. 19. How did you come to own this land?

Mr. KELLOGG: Objected to as immaterial, the record title being the better evidence, calling for the legal conclusion of the witness, and not proper cross-examination.

A. He says, The land was given to my father, and when he died he gave the land to me.

X Q. 20. To you alone?

A. Yes, sir; gave it to me alone.

X Q. 21. Do any of these sisters and children that you have named here own any interest in that land?

Mr. KELLOGG: The same objection.

A. He says he couldn't say that they didn't own any of the land; he says, I suppose they own some of the land.

X Q. 22. You succeeded to your father as chief of the band of Red Lake Indians?

A. Yes, sir.

X Q. 23. Did you know the customs of the Red Lake Indians when a chief died, who succeeded to the chief?

A. Yes, sir.

X Q. 24. Who would succeed?

A. He said, I will be the one to succeed.

Mr. KELLOGG: Objected to as incompetent, immaterial, and irrelevant, and move that the answer be stricken out.

X Q. 25. Your father had two wives?

215 A. Yes, sir.

X Q. 26. Of which wife are you the son?

A. The first one.

X Q. 27. Would all the children of the second wife be entitled to succeed to the father in the same right as the children of the first wife?

Mr. KELLOGG: Objected to as incompetent, immaterial, and irrelevant, calling for the conclusion of the witness, an improper question, not proper cross-examination.

A. No, sir.

X Q. 28. Were both of these wives living at the same time?

A. Yes, sir; he says they were both living at the same time.

X Q. 29. The first wife was the head of the family so far as wives were concerned, wasn't she?

A. Yes, sir.

X Q. 30. Was you the oldest son of the first wife when your father died?

A. Yes, sir.

X Q. 31. According to the Indian custom at that time you were entitled, were you, to succeed to whatever property or interest your father left as the head of that house and as a chief?

Mr. KELLOGG: The same objection.

A. Yes, sir.

X Q. 32. And the home or the land upon which the father or chief lived?

A. Yes, sir.

X Q. 33. And whatever lands the father owned at that time?

Mr. KELLOGG: The same objection.

A. Yes, sir.

X Q. 34. And you are now chief of this band by reason to succession to your father's right as chief and to his estate and to what property he had?

Mr. KELLOGG: The same objection.

A. Yes, sir.

X Q. 35. This idea you have got of late in regard to these other children possibly having some interest in this land has come to you as being stated as some rule among the white people or from the Government officers, hasn't it?

Mr. KELLOGG: The same objection.

A. He says, I know nothing about that; he says when he died he didn't say anything to anybody else, but he just simply left everything to him.

X Q. 36. Who first spoke to you about these other sisters and children having some interest in the land?

Mr. KELLOGG: The same objection.

A. No one said anything to me about it.

BAY-MWAY-WAY-BIN-ACE, a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in this cause, deposes as follows in answer to interrogatories propounded to him by Mr. Kellogg:

(The witness was sworn and examined through an interpreter, United States Deputy Marshal Morison, who was duly sworn as an interpreter.)

Q. 1. You received some money from Capt. Lawler as rent for land here in Thief River?

A. Yes, sir; he says that he did.

Q. 2. And you signed a receipt, did you?

A. Yes, sir.

Q. 3. Are you a grandchild of old Chief Moose Dung?

A. Yes, sir.

The witness was not cross-examined.

Further hearing was adjourned to Crookston, Minnesota, July 24th, 1895.

(Title of Cause.)

Deposition of Theophile La Bissoniere, taken on behalf of the respondent at the Commercial hotel, Crookston, Minnesota, July 24th, 1895, before Richard A. Mabey, special examiner in this cause, pursuant to a stipulation and order of court on file herein.

Present: On behalf of the complainants, Orville Rhinehart, Esq.; on behalf of the respondent, James A. Kellogg, Esq.

Thereupon the following proceedings were had, to wit:

THEOPHILE LA BISSONIERE, a witness produced on behalf of the respondent, after being first duly sworn to testify the truth, the whole truth, and nothing but the truth in the cause, deposes as follows in answer to interrogatories propounded to him by Mr. Kellogg:

Q. 1. Where is your home?

A. Red Lake Falls.

Q. 2. What is your occupation?

A. Merchant.

Q. 3. What is your age?

A. Twenty-eight.

Q. 4. How long have you been at Red Lake Falls?

A. 16 years past.

Q. 5. Do you know one C. D. Wells?

A. Yes, sir.

Q. 6. And James Meehan, Jr. ?

A. Yes.

Q. 7. And Chief Moose Dung ?

A. Yes ; I have seen him a number of times in the early years down there to our town ; there used to be a lot of Indian traffic, and he has been pointed out to me a number of times ; of course, Indians will lie to me.

Q. 8. Do you recollect of taking an acknowledgement by Moose Dung to an instrument to Mr. Meehan ?

A. Yes, sir.

Q. 9. State the circumstances.

A. Mr. James Meehan, Jr., came over to the store ; I was then working for Joseph Smith as clerk ; Mr. Meehan, Jr., came over with that Indian, Moose Dung, and he asked me if I would take his acknowledgement to an instrument ; I said yes. Why, he says,

217 "let us go over to Mr. Wells' store," which was next door, "and he will do the interpretation." Well, we went over there, and I read the lease ; Mr. Wells asked the chief if he understood it, if he was willing to sign, and the chief grunted yes, and I took the acknowledgement.

Q. 10. In what language did you read it ?

A. I read it in English, of course.

Q. 11. Aloud or to yourself ?

A. I read it to Mr. Wells ; asked him if he knew the meaning of this instrument ; knew what it was for. He said yes.

Q. 12. State what else, if anything, occurred there.

A. Well, I don't remember of anything else.

Q. 13. You may say whether or not you translated it or interpreted it to Moose Dung.

A. I don't think I did.

Q. 14. Well, can you speak the Chippewa language ?

A. No ; I understand quite a few words. We have had Indian trade, and in business transactions I have picked up a few words. I know the names of most everything they call for in the store, but I can't hold a conversation about anything. I could ask them questions about certain things—where they were going or such like that—but not to hold any conversation.

Cross-examination.

By Mr. RINEHART :

X Q. 1. At that time you were a notary public duly appointed by the State of Minnesota ?

A. Yes, sir ; I was.

X Q. 2. And had taken an oath of office and given the bond required by law ?

Mr. KELLOGG : I will concede that.

X Q. 3. And when you affixed your official seal and your certificate to an instrument you always did it according to law and asked the parties if they understood the instrument and acknowledged the execution of it ?

A. Oh, yes.

X Q. 4. And you did the same thing in the Moose Dung matter?

A. Oh, yes; because you see the man was almost a stranger to me. I think I had seen him before in the way of business. We had business with lots of them, and they can't talk English, and I read the paper over to them and asked them if they are willing to sign.

X Q. 5. And you remember in this case doing that, the man being an Indian?

A. Yes; I remember perfectly well, especially when it is a man I don't know.

X Q. 6. And you remember that at that time you inquired as to whether he was acquainted with the terms of the lease?

A. Yes; I remember it very well. We were standing at the counter or show-case, and I asked him, the last thing, if he was perfectly willing to sign that, and he smiled and grunted.

X Q. 7. And he did sign it or he made his mark to it?

A. Yes.

218 X Q. 8. Did you ask him whether he executed it freely and voluntarily as his free act and deed?

A. Oh, yes.

X Q. 9. And he grunted assent to that question?

A. Yes.

X Q. 10. Then you affixed your certificate to it. Was you more particular in taking this acknowledgement than you would have been with an English or American person?

A. No; I don't say that. I said I am more particular dealing with people I don't know. If a man comes before me to have an acknowledgement taken outside of our store business—if a man says, "I want a mortgage drawn up," when I read it I ask him if he signs it voluntarily, of course; I make a practice of that.

X Q. 11. Then you took this acknowledgement with all the formality that is required of you as a notary public according to law, did you?

A. To the best of my knowledge, I did.

X Q. 12. You signed as a witness and signed as notary public?

A. Well, I don't remember; I suppose I did; of course, it required witnesses.

X Q. 13. If your name should appear on the instrument as having been signed as a witness, you would be satisfied that you did?

A. Oh, yes.

Redirect examination.

By Mr. KELLOGG:

Q. 1. What was you inquiring of Moose Dung? Do I understand you to say that you spoke directly to him or through the interpreter?

A. When I asked him—Wells asked him, and I turned to him and asked him if that was all right.

Q. 2. You asked him in English, didn't you?

A. Oh, yes; the man understands a few words of English. Of course, Wells asked him, and I turned to him, looked at him, and he looked at me then and answered me.

Recross-examination.

By Mr. RHINEHART:

X Q. 1. And the paper was lying before you all the time this conversation occurred?

A. Yes; we went from my store, where I was working, to Wells' store and stood there by the show-case.

X Q. 2. And when he put his mark on it he looked at you and nodded his head?

A. I asked him if he acknowledged it.

Further hearing adjourned to Minneapolis, Thursday, August 1st, 1895, at 10 a. m.

Title of Cause.

Pursuant to adjournment the hearing in the above-entitled cause was resumed at the clerk's office of the United States district court, in the city of Minneapolis, Minnesota, on Thursday, August 1st, 1895, before Richard A. Mabey, special examiner. Orville Rhinehart, Esq., appeared on behalf of the complainants and James A. Kellogg, Esq., appeared on behalf of the respondent; whereupon the following proceedings were had, to wit:

Mr. KELLOGG: I offer in evidence certified transcript from the Commissioner of Indian Affairs' office containing letter from D. M. Browning, Commissioner, to Robert M. Allen, United States Indian agent, White Earth agency, Minnesota; letter of Robert M. Allen, agent, to the Commissioner; affidavits of Mon-si-moh, affidavits of May-dwa-gun-on-ind, Nah-gun-e-gwon-abe, Nay-ah-tah-wub, Gay-bay-gah-bow, Ne-gon-e-bin-ace, Ay-sin-e-wub-eak, O-she-now-ah-sheak, Bay-mway-way-bin-ace, and a letter from Thomas P. Smith, acting Commissioner of Indian Affairs, to the honorable the Secretary of the Interior, dated April 9th, 1895, and a letter from Williams H. Sims, acting Secretary of the Interior, to the Commissioner of Indian Affairs, dated April 23rd, 1895, and a letter from Thomas P. Smith, acting Commissioner of Indian Affairs, to Robert M. Allen, Esq., United States Indian agent, White Earth, Minnesota, dated May 4th, 1895, together with the certificate of the authenticity and correctness of said documents, made by D. M. Browning, Commissioner of Indian Affairs.

Mr. RHINEHART: All of which we object to as incompetent, immaterial, and irrelevant.

Papers marked Exhibit 16.

Mr. KELLOGG: I next offer in evidence a lease, dated the 19th day of July, 1895, Exhibit 17, by and between Mon-si-moh, Bay-sha-bun-noke, Ah-sin-e-wub-eak, Bay-mway-way-bin-ace, Ne-gon-e-bin-ace, and O-she-now-ah-sheak and Ray W. Jones, the defendant in this case, together with the certificate of Albert Wickstrom, register of deeds for Polk county that the same is a correct transcript from the records of said office and the whole thereof, which lease is recorded in Book F of Miscellaneous, on page 249, in said office, on the 29th day of July, 1895.

Mr. RHINEHART: We object to it as incompetent, immaterial, and irrelevant.

Mr. KELLOGG: I next offer in evidence a copy of the complaint in the suit of Mon-si-moh, commonly called Moose Dung, complainant, against Patrick Meehan and James Mehan, defendants, in the United States circuit court for the eighth circuit and district of Minnesota and sixth division, together with the certificate of the clerk of said court that the same is a true and correct copy and the whole thereof of the original on file in that office.

Mr. RHINEHART: Objected to as incompetent, immaterial, and irrelevant.

Marked Exhibit 18.

JAMES A. KELLOGG recalled:

I am the solicitor of record in this case and have been the attorney for Mr. Jones, the defendant, in procuring the lease and the approval which he holds of the land described in the pleadings in this case. I first met Mon-si-moh or Chief Moose Dung at Thief River Falls and entered into negotiations for a lease of the land. I

then learned for the first time that he was not the Chief
220 Moose Dung named in the treaty. I then inquired of him how many, if any, children his father left or their children that were then living.

Mr. RHINEHART: To this line of evidence complainants object as being incompetent, immaterial and irrelevant, and not within the issues of the case, and move to strike out for the same reason.

The WITNESS: Through the interpreter I was informed that the chief said he had two sisters, but the interpreter explained that what an Indian calls sister the white man called a cousin. This was the best information I had at that time. I then went with the chief to Red Lake agency and there inquired of persons with whom I came in contact that would know him what, if any, brothers and sisters or children of deceased brothers and sisters Chief Moose Dung had.

Mr. RHINEHART: The same objection and the same motion.

The WITNESS: And was unable to find that there were any. While in Washington I saw a communication from United States Agent Allen to the Commissioner of Indian Affairs that Chief Moose Dung had one sister living, whose name was Bay-sha-bun-noke. I did not learn of the existence of the several persons shown to have been sisters of the present Chief Moose Dung and nieces and nephews whose parents are dead until I received the information from Agent Allen at White Earth on the 18th day of July of this year.

Mr. RHINEHART: Complainants move to strike out all testimony with relation to the relations of Moose Dung as being incompetent, immaterial and irrelevant, and not within the issues of the case.

Cross-examination.

By Mr. RHINEHART:

X Q. 1. You have seen a copy of what is called the Murchison report, have you not?

A. Yes, sir.

X Q. 2. Don't you know, as a matter of fact, that Mr. Murchison reported to the Indian Bureau that there were other children or said to be other children of the elder Chief Mon-si moh living?

A. No, sir.

X Q. 3. Don't you know, as a matter of fact, that the order of approval made by the Secretary of the Interior to the Jones lease contained the condition that the money should be paid by the agent in charge of the Chippewa Indians in Minnesota to such persons as might be entitled thereto?

A. Yes, sir.

X Q. 4. And you knew at the time that that order of approval was made that there were thought to be or known to be other children who might have an interest in this land and it was open to construction as to whether they did or not?

A. The only information which I had is that which I have mentioned. Mr. Murchison omitted the inquiry as to the relations of Moose Dung and requested Agent Allen to furnish the information, and he informed the office that Moose Dung had one sister, Bay-sha-bun-noke; that was the only information he had at that time, and that clause in that lease was appended at my suggestion for the purpose of protecting my client from liability.

221 X Q. 5. At that time you had been informed that Moose Dung had a sister?

A. Yes, sir; as I have already stated.

Redirect examination:

The WITNESS: This information regarding the sister of Moose Dung was not received until after the lease had been made and filed in the office of the Commissioner of Indian Affairs and the act of Congress authorizing the Secretary of the Interior to approve it. The words "conditions and limitations" in the act of Congress were inserted by myself with a view of having—

Mr. RHINEHART: I object to this as incompetent, immaterial, and irrelevant. That is an act of Congress of the United States.

The WITNESS (continuing): Having the limitations and conditions which are put in the lease and approval of the lease put in.

RAY W. JONES recalled.

Examined by Mr. KELLOGG:

Q. 1. When, if at all, did you first learn that there were any other persons the heirs of the elder Moose Dung than the present Moose Dung?

Mr. RHINEHART: Objected to as irrelevant and immaterial.

A. Well, within the last two or three weeks.

Q. 2. Who, if any one, had charge of the procurement of the lease and the approval other than yourself?

A. Mr. Kellogg, my attorney.

Q. 3. State whether or not you entrusted the entire matter to him.

A. I did.

Q. 4. You may say whether or not you supposed that the present Moose Dung was the only person interested in that land in the complaint described when you first sought the procurement of the lease.

Mr. RHINEHART: The same objection.

A. I supposed he was the sole person with whom I had to deal.

Mr. RHINEHART: I don't care to cross-examine.

Defendant rests.

Further hearing adjourned until Saturday, August 10th, 1895, at the office of the clerk of the United States district and circuit courts, Minneapolis, Minnesota.

DEFENDANT'S EXHIBIT 1.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, August 6, 1894.

I, D. M. Browning, Commissioner of Indian Affairs, do hereby certify that the paper hereunto attached is a true copy of the original as the same appears on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

[SEAL.]

D. M. BROWNING,
Commissioner.

MOUTH OF THIEF RIVER, MINN., Sept. 10th, 1879.

A. E. Hayt, Commissioner Indian Affairs, Washington, D. C.

222 & 223 SIR: The heirs of Chief Moose Dung have selected the following-described lands at the mouth of Thief river, a plat whereof is hereunto attached, to wit: All of fractional section No. 27, all of fractional section No. 34, the east $\frac{1}{2}$ and east $\frac{1}{2}$ of west $\frac{1}{2}$ of section No. 28, the northeast $\frac{1}{4}$ of northeast $\frac{1}{4}$ of section No. 33, or enough thereof to make, with the other descriptions, 640 acres of land, all in township No. 154 north, range 43 west.

I would suggest that immediate action be taken to prevent settlers from occupying these lands, which are the lands selected by the old Chief Moose Dung before his death; have seen and notified the department surveyor, who is now on the ground; also notified the

United States land office at Crookston and the surveyor general at St. Paul.

Respectfully yours,

C. A. RUFFEE,
United States Indian Agent, White Earth, Minn.

224

DEFENDANT'S EXHIBIT 2.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *August 1, 1894.*

I, S. W. Lamoreux, Commissioner of the General Land Office, do hereby certify that the annexed copy of letter dated September 30, 1879, from the acting Secretary of the Interior to the Commissioner of the General Land Office, and a copy of letter dated October 4, 1879, from the acting Commissioner of the General Land Office to the United States surveyor general of Minnesota, are true and literal exemplifications of the original letter of said date from the acting Secretary of the Interior (including the pencil interlineation in the eighth line of the first page) and of the official record of the acting Commissioner's letter of said date now in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

S. W. LAMOREUX,
Commissioner of the General Land Office.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *September 30, 1879.*

The Commissioner of the General Land Office.

SIR: I transmit herewith for your information a copy of a letter, dated the 26th instant, from the Commissioner of Indian Affairs, together with the inclosures therein noted, in relation to a selection of land near the mouth of Thief river, in the State of Minnesota, made by the heirs of "Moose Dung" in accordance with the provisions of article IX of the treaty with Chippewa Indians of October 2, 1863. (13 Stats., p. 669.)

The following description of the lands selected will identify the same, namely:

The fractional section 27, fractional section 34, the east $\frac{1}{2}$ and the east $\frac{1}{4}$ of west $\frac{1}{2}$ of section 28, the northeast $\frac{1}{4}$ of northeast $\frac{1}{4}$ of section 33, or enough thereof to make, with the other lands described, 640 acres; all situated in township No. 154 north, range 43 west, in the State of Minnesota, which lands were selected also by the chief before his death.

In accordance with the recommendation of the Commissioner of Indian Affairs the said selection has the approval of this department, and you will please take the necessary steps for the protection of the said lands so reserved for the benefit of those entitled, as contemplated by the treaty stipulations.

Very respectfully,

A. BELL,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., Oct. 4, 1879.

J. H. Stewart, Esq., United States surveyor general, St. Paul, Minn.

SIR: For your information, and for the files of your office, I transmit herewith inclosed a copy of letter dated Sept. 30, 1879, from the acting Secretary of the Interior, with a diagram, 225 showing the lands selected near the mouth of Thief river, in township 154 north, range 43 west, Minnesota, by the heirs of "Moose Dung" in accordance with the provisions of article 9 of the treaty with the Chippewa Indians, Oct. 2. (13 Stats., page 669.)

You will cause to be represented upon the official township plat the reservation for said Indian, as described in the inclosed papers.

Very respectfully,

J. M. ARMSTRONG,
Acting Commissioner.

DEFENDANT'S EXHIBIT 3.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., August 2, 1891.

I, S. W. Lamoreux, Commissioner of the General Land Office, do hereby certify that the annexed copy of so much of vol. 8, Crookston, Minn., Tract Book, as relates to the selection by Chief "Moose Dung" of lands in sections 27, 28, and 34, township 154 north, range 43 west, Minnesota, is a true and literal exemplification of the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

S. W. LAMOREUX,
Commissioner of the General Land Office.

DEFENDANT'S EXHIBIT 4.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, February 7, 1895.

I, D. M. Browning, Commissioner of Indian Affairs, do hereby certify that the paper hereunto attached is a true copy of the original as the same appears on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

[SEAL.]

D. M. BROWNING,
Commissioner.

Description of Tract.

Part of section.	Sec.	Twp.	R.	Contents.	
				Acres.	100ths.
Lots 1, 2, 3, 4, and 5.....	27	154	43	See sec.	34
N. E. $\frac{1}{4}$, E. $\frac{1}{4}$ N. W. $\frac{1}{4}$, S. E. $\frac{1}{4}$, and E. $\frac{1}{4}$ S. W. $\frac{1}{4}$	28	154	43	"	"
Lots 1, 2, 3, 4, and 5 of sec. 27, N. E., E. $\frac{1}{4}$ N. W. $\frac{1}{4}$, S. E. $\frac{1}{4}$, E. $\frac{1}{4}$ S. W. $\frac{1}{4}$, sec. 28, and lot No. 1 of.....	34	154	43	653	75

Selected by Chief Moose Dung under treaty Oct. 2, 1863 (13 Stats., 669). Approved Sept. 30, 1879.

226

(Copy.)

This contract and agreement made this 20th day of July, A. D. 1894, by and between Mon-si-moh, commonly called Moose Dung, son, heir, and successor of Mon-si-moh, also commonly called Moose Dung, party of the first part, and Ray W. Jones, party of the second part, witnesseth:

That said party of the first part in consideration of the agreements and covenants hereinafter mentioned does hereby lease and let unto the party of the second part, his heirs and assigns, all that piece or parcel of land known and described as follows: Lot one (1), in section thirty-four (34), township one hundred and fifty-four (154), range forty-three (43), county of Polk and State of Minnesota, and more particularly described as follows: Commencing at the northeast corner of the plat of Thief River Falls; thence east to the middle of the Red Lake river; thence down the thread of the stream of said river to the plat of said Thief River Falls; thence north to the place of beginning, together with all appurtenances and riparian rights thereunto belonging for the period of twenty years from this date at and for the yearly rental of two hundred dollars per year, payable quarterly in advance.

And the said second party, for and in consideration of the foregoing, does hereby covenant and agree to and with the party of the first part that he will well and truly pay to the party of the second part the rent hereinbefore specified, and in addition thereto will procure from the Government of the United States of America and its proper officers written evidence of title to the tract of land given to Mon-si-moh by treaty made at Old Crossing of Red Lake river in the State of Minnesota, the second day of October, A. D. 1863, or a patent of such title.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

[SEAL.]

MON-SI-MOH. ^{his} x
mark
RAY W. JONES.

[SEAL.]

In presence of—
W. R. SPEARS.
C. J. KNOX.
W. B. McNEILL.
JAMES A. KELLOGG,
EDSON J. KELLOGG,
To Ray W. Jones.

STATE OF MINNESOTA, } ss:
County of Beltrami,

I hereby certify that on this 20th day of July, A. D. 1894, personally appeared before me Mon-si-moh, commonly called Moose Dung, to me personally known to be the person described in the foregoing instrument, and to whom I fully explained and made known the nature thereof in his own language, and after such explanation he subscribed the same and acknowledged the same to be his free act and deed and for the purposes therein set forth.

[SEAL.]

W. R. SPEARS,
Notary Public, Beltrami County, Minn.

STATE OF MINNESOTA, } ss:
County of Hennepin,

On this 24th day of July, A. D. 1894, before me, a notary public within and for said county, personally appeared Ray W. Jones, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed for the purposes therein stated.

[SEAL.]

JAMES A. KELLOGG,
Notary Public, Hennepin County, Minn.

227

OFFICE OF REGISTER OF DEEDS,
COUNTY OF POLK, MINNESOTA.

I hereby certify that the within instrument was filed in this office for record on the 23rd day of July, A. D. 1894, at 8.45 o'clock p. m., and was duly recorded in Book F of Miscellaneous, on pages 96-7.

[SEAL.]

JOHN AMUNDSON,
Register of Deeds.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY, November 13, 1894.

The within lease from Mon-si-moh, or Moose Dung, to Ray W. Jones, dated July 20, 1894, is hereby approved upon the following conditions:

The rent shall be \$400 per annum, payable quarterly, in advance,

and shall be paid to the agent in charge of the Chippewa Indians in Minnesota, and by him paid to the parties found to be entitled thereto by this department.

Within six months next preceding the expiration of each period of five years from the date thereof the rental value shall be ascertained and the rent readjusted to that value. If the parties are unable to agree upon the amount to be paid for the ensuing five years, which shall also meet the approval of the Secretary of the Interior, then the lessor, his heirs or assigns, may appoint an appraiser to be approved by the Secretary of the Interior, and the lessee, his heirs and assigns, may also select an appraiser, and said two appraisers may select a third, or in case of their failure *in* to agree in such selection, then upon application of either party to said lease, ten days' notice thereof being given to the other party to the judge of probate of the county in which the land is situated, said judge may appoint a third appraiser, and the three appraisers so appointed or a majority of them shall fix and determine the amount of rent to be paid for the five years next ensuing.

The said premises nor any part thereof shall not be sublet without the written consent of the lessor, his heirs or assigns, and the approval of the Secretary of the Interior.

This approval shall not become operative until the terms and conditions herein recited shall have been accepted in writing by the lessee.

WM. H. SIMS,
Acting Secretary.

I hereby accept and agree to the terms and conditions of the above approval of lease.

Dated Nov. 16, 1894.

RAY W. JONES.

OFFICE OF REGISTER OF DEEDS,
COUNTY OF POLK, MINNESOTA.

I hereby certify that the within instrument was filed in this office for record on the 17th day of November, A. D. 1894, at 9 o'clock a. m., and was duly recorded in Book E of Misc., on pages 470-1.

[SEAL.]

JOHN AMUNDSON,
Register of Deeds.

For a valuable consideration I agree to the terms of the above approval and accept the same.

Dated Dec. 5th, 1894.

MON-SI-MOH. ^{his} x
mark.

228 Witnesses to Mon-si-moh's mark :

W. R. SPEARS.
LEWIS P. JOHNSON.
F. H. KRATKA.
E. G. MAXWELL.

OFFICE OF REGISTER OF DEEDS,
COUNTY OF POLK, MINNESOTA.

I hereby certify that the within instrument was filed in this office for record on the 24th day of January, A. D. 1895, at 9 o'clock a. m., and was duly recorded in Book F of Misc., on pages 207-209.

[SEAL.]

ALBERT WICKSTROM,
Register of Deeds.

DEFENDANT'S EXHIBIT 5.

(*Private Resolution—No. 5.*)

Joint resolution authorizing the Secretary of the Interior to approve a certain lease made in Polk county, Minnesota.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized to approve, if in his discretion he deems the same proper and advisable and upon such terms and limitations as he may impose, that certain lease made and executed by Mon-si-moh (commonly called Moose Dung) to Ray W. Jones, of lot one (1), in section thirty-four (34), in town one hundred and fifty-four (154) north, of range forty-three (43) west, in the county of Polk and State of Minnesota, which said lease is now on file in the Office of Indian Affairs.

Approved August 4, 1894.

Department of State, August 11, 1894.

A true copy.

E. J. RENICK,
Chief Clerk.

DEFENDANT'S EXHIBIT 7.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *January 28th, 1895.*

I, W. H. Sims, acting Secretary of the Interior, hereby certify that the paper hereto attached is a true copy of the original as the same appears on file in this department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the department to be affixed the day and year first above written.

WM. H. SIMS,
Acting Secretary.

Copy.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *December 27, 1894.*

The chief of the Indian division:

Some time ago a letter was prepared by the first assistant secretary, approving a lease by Mon-si-moh of a portion of a tract of land situated on Thief river, Minnesota. Pending an investigation of

the character of title held by Chief Mon-si-moh, as well as his relations to the Chippewa tribes, I directed that the execution of the letter prepared by the first assistant secretary be suspended.

After a full investigation I am satisfied that the department has authority to approve a lease of the property made by Mon-si-moh, and you will forward at once the letter of the first assistant secretary to the Commissioner of Indian Affairs.

HOKE SMITH, *Secretary.*

229

DEFENDANT'S EXHIBIT 9.

Affidavit of Legal Publication.

STATE OF MINNESOTA, }
County of Polk, } ss:

W. L. Palmer came personally before me, and, being duly sworn, doth depose and say that he is now and during all the time herein-after mentioned has been foreman in the office of the Crookston Times, a daily newspaper printed and published in Crookston, in said Polk county, on daily of each week; that he knows of his own knowledge that the articles of incorporation a printed copy of which is hereto attached, cut from the columns of said newspaper, was inserted, printed, and published in said newspaper once in each issue for 12 successive issues, and that all of said publications were made in the English language; that said notice was first inserted, printed, and published in said newspaper on Monday, the 3rd day of December, 1894, and was printed and published therein on each and every day thereafter until and including Saturday, the 15th day of December, 1894; that during all the time aforesaid said newspaper was a collection of general news, comments, and miscellaneous items and regularly issued and published on daily of each week from a known office of publication, said office being equipped with the necessary materials and skilled workmen for producing the same, and has consisted of not less than four pages of more than five columns to the page, each column not less than seventeen and three-fourths inches in length, and never made up wholly of patent plates and advertisements or either or any of them, and has not been substantially a duplicate of any other newspaper, and has been regularly delivered each week to more than 240 paid subscribers, and that said newspaper, composed and consisting as above set forth, was printed and published in the English language, generally circulated in Polk county for more than one year next preceding the date of the first publication of said notice; that the publisher of said newspaper, on May 24th, 1893, filed with the county auditor of said Polk county an affidavit setting forth the facts required by section 2 of chapter 33 of the Laws of the State of Minnesota for the Year 1893.

W. L. PALMER.

Subscribed and sworn to before me this 18th day of December,
A. D. 1894.

[SEAL.]

W. B. McKENZIE,
Notary Public, Polk Co., Minn.

Articles of Incorporation of the Maxwell-Jones Lumber Company.

For the purpose of organizing a corporation under the laws of the State of Minnesota for manufacturing purposes only, we, the undersigned, do hereby associate ourselves together, and for that purpose do hereby adopt the following articles of incorporation :

Article I.

The name of this corporation shall be Maxwell-Jones Lumber Company.

Article II.

The general nature of the business of this corporation shall be the manufacture of lumber, lath, shingles, pickets, timbers, and
230 other similar material from forest products, and owning, controlling, and operating saw-mills, planing mills, and lands appurtenant and incident to such manufacturing business. The principal place of transacting the business of this corporation shall be Thief River Falls, State of Minnesota.

Article III.

The time of the commencement of this corporation is the first day of December, A. D. 1894, and the period of its duration shall be thirty (30) years.

Article IV.

The amount of the capital stock is hereby fixed at the sum of one hundred thousand dollars (\$100,000), to be divided into shares of one hundred dollars (\$100) each, and shall be paid in as called for by the board of directors.

Article V.

The highest amount of indebtedness or liability to which this corporation shall at any time be subject shall be one hundred thousand dollars (\$100,000).

Article VI.

The names and places of residence of the persons forming this corporation are: Edgar G. Maxwell, Pentwater, Michigan; Ray W. Jones, Minneapolis, Minnesota; William B. O. Sands, Pentwater, Michigan; Edwin B. Wright, Grand Rapids, Michigan; Thomas Munroe, Muskegon, Michigan; Hugh Park, Muskegon, Michigan; James E. Munroe, Chicago, Illinois.

Article VII.

The names of the persons forming the first board of directors are: Edgar G. Maxwell, Ray W. Jones, Thomas Munroe, Edwin B. Wright, and William B. O. Sands.

Article VIII.

The government and management of the business and affairs of this corporation shall be vested in and exercised by a president, vice-president, secretary, treasurer, and such other officers and agents as may be prescribed by the board of directors.

Article IX.

The number of shares in the capital stock of this corporation shall be one thousand shares and the amount of each share shall be one hundred dollars (\$100).

In witness whereof we have hereunto set our hands and seals this 1st day of December, A. D. 1894.

EDGAR G. MAXWELL. [SEAL.]

RAY W. JONES. [SEAL.]

THOMAS MUNROE. [SEAL.]

HUGH PARK. [SEAL.]

By THOMAS MUNROE, [SEAL.]

His Attorney-in-fact.

EDWIN B. WRIGHT, [SEAL.]

By THOMAS MUNROE, [SEAL.]

His Attorney-in-fact.

WILLIAM B. O. SANDS, [SEAL.]

By EDGAR G. MAXWELL, [SEAL.]

His Attorney-in-fact.

JAMES E. MUNROE, [SEAL.]

By EDGAR G. MAXWELL, [SEAL.]

His Attorney-in-fact.

In presence of—

JAMES A. KELLOGG.

EDSON J. KELLOGG.

STATE OF MINNESOTA, }
County of Hennepin, } ss :

On this first day of December, A. D. 1894, before me personally appeared Edgar G. Maxwell, Ray W. Jones, and Thomas Munroe, to me personally known to be the persons described in and who executed the foregoing instrument and articles of incorporation, and each acknowledged that he executed the same as his free act and deed.

[SEAL.]

JAMES A. KELLOGG,
Notary Public, Hennepin Co., Minn.

STATE OF MINNESOTA, }
 County of Hennepin, } ss :

On this first day of December, A. D. 1894, before me personally appeared Thomas Munroe, to me known to be the person who executed the foregoing instrument in behalf of Hugh Park and Edwin B. Wright, and acknowledged that he executed the same as the free act and deed of each of said Hugh Park and Edwin B. Wright.

[SEAL.]

JAMES A. KELLOGG,
Notary Public, Hennepin Co., Minn.

STATE OF MINNESOTA, }
 County of Hennepin, } ss :

On this first day of December, A. D. 1894, before me personally appeared Edgar G. Maxwell, to me personally known to be the person who executed the foregoing instrument in behalf of William B. O. Sands and James Munroe, and acknowledged that he executed the same as the free act and deed of each of said William B. O. Sands and James E. Munroe.

[SEAL.]

JAMES A. KELLOGG,
Notary Public, Hennepin Co., Minn.

STATE OF MINNESOTA, }
 Department of State. }

I hereby certify that the within instrument was filed for record in this office on the first day of December, A. D. 1894, at 2 o'clock p. m., and was duly recorded in Book L 2 of Incorporations, on page —.

F. P. BROWN,
Secretary of State.

Office of register of deeds, county of Polk, Minnesota.

I hereby certify that the within instrument was filed in this office for record on the 3rd day of December, A. D. 1894, at 8.20 o'clock a. m., and was duly recorded in Book — of —, on page —.

[SEAL.]

JOHN AMUNDSON,
Register of Deeds.

DEFENDANT'S EXHIBIT 16.

DEPARTMENT OF THE INTERIOR,
 OFFICE OF INDIAN AFFAIRS,
 WASHINGTON, July 17, 1895.

I, D. M. Browning, Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true copies of the originals as the same appear on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

232

[SEAL.]

D. M. BROWNING,
Commissioner.

Refer in reply to the following: Land, 4495, 1895.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *February 4, 1895.*

Robert M. Allen, Esq., U. S. Indian agent, White Earth agency, Minnesota.

SIR: I am in receipt of your communication of January 24, 1895, in which you state that on the 21st of that month Ray W. Jones deposited with you \$100, to be paid to Mon-si-moh or Moose Dung for one-quarter's rental of certain lands leased by him from said Mon-si-moh in case you were instructed so to do by the Indian Office.

You further state that you have not been officially informed with reference to the approval of the lease and ask to be advised as to whether or not the lease has been approved by the Secretary of the Interior and as to whom you shall pay the money deposited with you by Mr. Jones.

In reply I have to advise you that the lease referred to by you between Ray W. Jones and Mon-si-moh covers the following-described lands granted old Chief Moose Dung, father of Mon-si-moh, by the treaty of October 2, 1863 (13 Stats., 669):

Lot 1, in section 34, township 154 N., range 43 W., in Polk county, Minnesota, containing 31.08 acres. Said lease was approved by the acting Secretary of the Interior on November 13, 1894, as follows:

"The within lease from Mon-si-moh or Moose Dung to Ray W. Jones, dated July 20, 1894, is hereby approved upon the following conditions:

"The rent shall be \$400 per annum, payable quarterly, in advance, and shall be paid to the agent in charge of the Chippewa Indians in Minnesota and by him paid to the parties found to be entitled thereto by this department.

"Within six months next preceding the expiration of each period of five years from the date thereof the rental value shall be ascertained and the rent readjusted to that value. If the parties are unable to agree upon the amount to be paid for the ensuing five years, which shall also meet the approval of the Secretary of the Interior, then the lessor, his heirs or assigns, may appoint an appraiser, to be approved by the Secretary of the Interior, and the lessee, his heirs or assigns, may also select an appraiser, and said two appraisers may select a third, or, in case of their failure to agree in such selection, then, upon application of either party to said lease, ten days' notice thereof being given to the other party, to the judge of probate of the county in which the land is situated, said judge may appoint a third appraiser, and the three appraisers so appointed or a majority of them shall fix and determine the amount of rent to be paid for the five years next ensuing.

"The said premises nor any part thereof shall not be sublet without the written consent of the lessor, his heirs or assigns, and the approval of the Secretary of the Interior.

233 "This approval shall not become operative until the terms and conditions herein recited shall have been accepted in writing by the lessee."

On November 16, 1894, Ray W. Jones accepted and agreed to the terms and conditions of said approval as follows:

"I hereby accept and agree to the terms and conditions of the above approval of lease."

On December 5, 1894, said Mon-si-moh, for a valuable consideration, accepted and agreed to the terms of the above approval.

You will notice that by the terms of the approval of the lease the rent for said land was to be paid to the agent in charge of the Chippewa Indians in Minnesota, and by him to be paid to the parties found to be entitled thereto by this department.

In your letter to this office of October 16, 1894, you stated that Mon-si-moh, or Moose Dung, has a sister living. It is also possible that there are other heirs of old Chief Moose Dung who should share in the proceeds arising from the lease of said lands.

You are accordingly directed to fully investigate the subject as to who are the legal heirs of old Chief Moose Dung, for the purpose of ascertaining to whom said rent should be paid. All of the evidence in the matter should be submitted to this office in the form of affidavits taken by you or under your direction. You should also make a full report and recommendation in the premises. At all of these hearings Mon-si-moh should be permitted to be present, both in person and by attorney, if he so desires, and his affidavit should also be taken as part of the evidence in the case.

After the office determines who are the legal heirs of old Chief Moose Dung, in accordance with the evidence you will submit as above directed, you will be informed as to whom the money should be paid. Until the case has been determined you should hold the money in your hands paid to you by Mr. Jones on the lease.

Very respectfully,

D. M. BROWNING,

Commissioner.

(McPherson) H.

6 inclosures.

DEPARTMENT OF THE INTERIOR,
U. S. INDIAN SERVICE,
WHITE EARTH AGENCY, MINN., March 30, 1895.

The honorable the Commissioner of Indian Affairs, Washington,
D. C.

SIR: In obedience to your letter dated February 4th, 1895 (Land, 4495, 1895), I have the honor to inclose herewith affidavits of persons claiming an heirship in the estate of old Chief Moose Dung and affidavits of chiefs and head men in support of their claims. I also inclose you affidavit of Mon-si-moh, or Moose Dung, he being the same person who executed the lease to Ray W. Jones.

The proof submitted I consider reliable, and I have no doubt but what Moose Dung, or Mon-si-moh, Bay-sha-bin-noke, O-she-now-ab-sheak, Ne-gon-e bin-ace, Ay-sin-e-wubeak, and Bay-mway-bin-ace are the only living heirs of old Chief Moose Dung and are entitled to share equally in said estate.

Very respectfully,

ROBERT M. ALLEN,

U. S. Indian Agent.

234 STATE OF MINNESOTA, } ss:
Becker County,

Personally appeared before me, a notary public in and for the county of Becker and State of Minnesota, Mon-si-moh, or Moose Dung, who, first being duly sworn, deposes and says that he is the son of old Chief Moose Dung, now deceased, and that he resides on the Red Lake reservation, and is 67 years of age, and that the legal heirs entitled to share in the estate of his father, old Chief Moose Dung, are as follows:

Myself, Mon-si-moh, or Moose Dung, Bay-sha-bah-noke (sister), O-she-now-ah-sheak (sister), and Ne-gon-e-bin-ace, Ay-sin-e-wub-eak, Bay-mway-way-bin-ace (grandchildren).

The above-named persons are the only legal heirs of my father, and are entitled to share in said estate.

The three last named being grandchildren of my father, old Chief Moose Dung, all being of legal age.

MON-SI-MOH, or MOOSE DUNG. his
x
mark.

Witnesses:

D. S. MORRISON.
TRUMAN BEAULIEU,
Interpreter.

STATE OF MINNESOTA, } ss:
Becker County,

Subscribed and sworn to before me this 30th day of March, A. D. 1895, and I certify that the above affidavit was fully made known to the affiant, being interpreted to him in the Indian language.

JOHN LEECY,
Notary Public.

White Earth, Minn., March 30, 1895.

RED LAKE, MINN., *March 6th, 1895.*

We, the undersigned, chiefs and head men of the Red Lake Indian reservation, hereby certify that we were acquainted with all the children of old Chief Moose Dung, deceased, and know them to be viz: Moose Dung, Bay-sha-bah-noke, O-ke-che-tah-quay, O-ske-ne-ke-quay, gotten by Bak-gun; O-she-now-ah-sheak, Gay-gway-do-say, gotten by Moschwance. We also know four of them to be dead: O-teche-tah-quay, Gay-gway-do-say, and O-ske-ne-ke-quay,

the only living heirs of which are Ne-gon-e-bin-ace, Bay-mway-way-bin-ace, and Ay-sin-e-wub-eak.

(CHIEF) MAY-DWAY-GAH-NO-WIND. ^{his}
x
mark.

(CHIEF) NAH-GAN-E-GWON-ABE. ^{his}
x
mark.

(CHIEF) NAY-AY-TAH-WUB. ^{his}
x
mark.

(CHIEF OF POLICE) GAY-BAY-GAH-BOW. ^{his}
x
mark.

Witnesses:

GEO. S. DAVIDSON.

PETER GRAVES.

Subscribed and sworn to before me this 6th day of March, 1895.

[SEAL.]

W. R. SPEARS,

Notary Public, Beltrami County, Minn.

(Written on the margin:) Ste-ne-wag, gotten by Moschwance, was killed by the Sioux, but had no children.

STATE OF MINNESOTA, {
Beltrami County. }

Personally appeared before me, a notary public within and for the county of Beltrami, in said State, Ne-gon-e-bin-ace, who, being duly sworn, deposes and says that he is the grandson of old Chief Moose Dung, deceased, and a son of O-ke-che-tah-quay, deceased, who was a daughter of old Chief Moose Dung and a sister to Mon-si-moh, or Chief Moose Dung, and that he is now living on the Red Lake Indian reservation and is forty-eight (48) years of age, 235 and that he is entitled to share equally (he being the only living heir of his mother) with Chief Moose Dung in the estate of old Chief Moose Dung.

NE-GON-E-BIN-ACE. ^{his}
x
mark.

Witnesses:

JAS. FAIRBANKS.

GEO. S. DAVIDSON.

STATE OF MINNESOTA, {
County of Beltrami. }

Subscribed and sworn to before me this 7th day of March, A. D. 1895, and I certify that I read the foregoing affidavit to affiant and made him fully acquainted with the contents, and had the same interpreted in the Indian language, said deponent's language.

[SEAL.]

W. R. SPEARS,

Notary Public, Beltrami County, Minn.

STATE OF MINNESOTA, {
Beltrami County. }

Personally appeared before me, a notary public within and for the county of Beltrami, in said State, Ay-sin-e-wub-eak, who, first being duly sworn, deposes and says that she is the granddaughter of old Chief Moose Dung, deceased, and a daughter of O-ske-ne-ke-quay, deceased, who was a daughter of old Chief Moose Dung and a sister to Mon-si-moh or Chief Moose Dung, and that she is now living on the Red Lake Indian reservation and is twenty-two years of age, and that she is entitled to share equally (she being the only living heir of her mother) with Chief Moose Dung in the estate of old Chief Moose Dung.

AY-SIN-E-WUB-EAK. ^{her} x
mark.

Witnesses:

PETER GRAVES.

GEO. S. DAVIDSON.

STATE OF MINNESOTA, {
County of Beltrami. }

Subscribed and sworn to before me this 5th day of March, A. D. 1895, and I certify that I read the foregoing affidavit to affiant and made her fully acquainted with its contents, and had the same interpreted in the Indian language, said deponent's language.

[SEAL]

W. R. SPEARS,

Notary Public, Beltrami County, Minn.

STATE OF MINNESOTA, {
Beltrami County. }

Personally appeared before me, a notary public within and for the county of Beltrami, in said State, O-she-now-ah-sheak, who, first being duly sworn, deposes and says that she is the daughter of Chief Moose Dung, now deceased, and that she now resides in the Red Lake Indian reservation, and that she is seventy-two (72) years of age, and that she is a half-sister of Mon-si-moh or Chief Moose Dung (her father being his father, but different mothers), and that she is entitled to share equally with her half-brother in the estate of old Chief Moose Dung.

O-SHE-NOW-AH-SHEAK. ^{her} x
mark.

Witnesses:

PETER GRAVES.

GEO. S. DAVIDSON.

STATE OF MINNESOTA, {
County of Beltrami. }

Subscribed and sworn to before me this 5th day of March, A. D. 1895, and I certify that I read the foregoing affidavit to affiant and

made her fully acquainted with its contents, and had the same interpreted in the Indian language, said deponent's language.

[SEAL.]

W. R. SPEARS,

Notary Public Beltrami County, Minn.

STATE OF MINNESOTA, }
Beltrami County. }

Personally appeared before me, a notary public in and for
236 Beltrami county, in said State, Bay-mway-bin-ace, who, first
being duly sworn, deposes and says that he is the grandson of
old Chief Moose Dung, deceased, and a son of Gay-way-do-say,
deceased, who was a son of old Chief Moose Dung and a half-brother
to Mon-si-moh or Chief Moose Dung (same father, but different
mothers), and that he is now living on the Red Lake Indian reser-
vation and is thirty-seven (37) years of age, and that he is entitled
to share equally (he being the only living heir of his father) with
Chief Moose Dung in the estate of old Chief Moose Dung.

BAY-MWAY-WAY-BIN-ACE. his
x
mark.

Witnesses:

PETER GRAVES.

GEO. S. DAVIDSON.

STATE OF MINNESOTA, }
Beltrami County. }

Subscribed and sworn to before me this 5th day of March, A. D.
1895, and I certify that I read the foregoing affidavit to affiant and
made him fully acquainted with its contents, and had the same
interpreted in the Indian language, said deponent's language.

[SEAL.]

W. R. SPEARS,

Notary Public, Beltrami County, Minn.

Refer in reply to the following: Land, 14403, 1895.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, April 9, 1895.

The honorable the Secretary of the Interior.

SIR: I beg to invite your attention to the matter relative to the
distribution of the proceeds arising from the lease executed by
Mon-si-moh or Moose Dung to Ray W. Jones and conditionally
approved by the acting Secretary on November 13, 1894. One of
the conditions of said approval is as follows: "The rent shall be
\$400 per annum, payable quarterly, in advance, and shall be paid
to the agent in charge of the Chippewa Indians in Minnesota, and
by him paid to the parties found to be entitled thereto by this
department."

This office accordingly, on February 4, 1895, invited Agent Allen's
attention to the matter and directed him to fully investigate the

subject as to who are the legal heirs of old Chief Moose Dung for the purpose of ascertaining to whom said rent shall be paid; that all of the evidence in the matter should be submitted to this office in the form of affidavits taken by him or under his direction, that he should also make full report and recommendation in the premises, and that at all of these hearings Mon-si-moh should be permitted to be present, both in person and by attorney, if he so desired, and his affidavit should also be taken as a part of the evidence in the case.

He was also advised that after the department determined who are the legal heirs of old Chief Moose Dung in accordance with the evidence he submits he would be informed as to whom the money should be paid; also that until the case has been determined he should hold the money in his hands paid him by Mr. Jones on said lease.

I am now in receipt of a communication from Agent Allen, of the White Earth agency, of date March 30, 1895, with which he encloses affidavits of persons claiming an heirship in the estate of old Chief Moose Dung and affidavits of chiefs and head men of the tribe in support of the respective claims of the parties.

He also encloses an affidavit of Mon-si-moh or Moose Dung relative to the matter. Agent Allen states that the proofs submitted he considers reliable and that he has no doubt but that

237 Mon-si-moh or Moose Dung, Bay-sha-bah-noke, O-she-now-ah-sheak, No-gon-e-bin-ace, Ay-sin-e-wub-eak, and Bay-mway-way-bin-ace are the only living heirs of old Chief Moose Dung, and hence are all the persons who are entitled to share in the proceeds arising from leasing the lands granted to him by the provisions of the treaty of October 2, 1863 (13 Stats., 669).

Mon-si-moh states in his affidavit that he is the son of old Chief Moose Dung, now deceased; that he resides on the Red Lake Indian reservation and is 67 years of age; that the legal heirs entitled to share in the estate of his father, old Chief Moose Dung, are as follows: Himself, Bay-she-bah-noke (sister), O-she-now-ah-sheak (sister), Ne-gon-e-bin-ace, Ay-sin-e-wub-eak, and Bay-mway-way-bin-ace (grandchildren); that the above-named persons are the only legal heirs of his father, and are the only ones entitled to share in the estate left by him, and that the three last-named persons are grandchildren of his father, old Chief Moose Dung, all of whom are of legal age.

O-she-now-ah-sheak in her affidavit states that she is the daughter of old Chief Moose Dung, deceased, and that she now resides on the Red Lake Indian reservation, and that she is 72 years of age; that she is a half-sister of Mon-si-moh, or Chief Moose Dung (her father being his father, but of different mothers), and that she is entitled to share equally with her half-brother in the estate of her deceased father.

No-gon-e-bin-ace in his affidavit states that he is the grandson of old Chief Moose Dung and a son of O-ke-cho-tah-quay, deceased, who was a daughter of old Chief Moose Dung and a sister of Mon-si-moh; that he is now living on the Red Lake Indian reservation and is 48

years of age, and that he is entitled to share equally with Mon-si-moh in the estate of old Chief Moose Dung, he being the only living heir of his mother, the said O-ke-che-tah-quay.

Ay-sin-e-wub-eak in her affidavit states that she is the granddaughter of old Chief Moose Dung, deceased, and a daughter of O-ske-ne-ke-quay, also deceased, who was a daughter of old Chief Moose Dung and a sister of Mon-si-moh; that she is now living on the Red Lake Indian reservation, and is 22 years of age, and that she is entitled to share equally with Mon-si-moh in the estate of old Chief Moose Dung, she being the only living heir of her mother, the said O-ske-ne-ke-quay.

Bay-mway-way-bin-ace in his affidavit states that he is the grandson of old Chief Moose Dung, deceased, and a son of Gay-gway, also deceased, who was a son of old Chief Moose Dung and a half-brother to Mon-si-moh, being of the same father, but of different mothers; that he is now living on the Red Lake Indian reservation, and is 37 years of age; and that he is entitled to share equally with Mon-si-moh in the estate of old Chief Moose Dung, he being the only living heir of his father, the said Gay-gway.

Agent Allen also submits the affidavits of the chiefs and head men of the tribe in support of and corroborative of the affidavits submitted by the other parties. From these affidavits it appears that each of the grandchildren is the only surviving heir of their respective parents, who are each entitled to share equally with Mon-si-moh in the estate granted old Chief Moose Dung.

238 Agent Allen states in his letter that he considers the proof reliable, and that he has no doubt but that the parties mentioned are the only living heirs of old Chief Moose Dung.

It is accordingly recommended that the following parties be determined to be the heirs of old Chief Moose Dung for the purposes of this lease, and that the rents arising from leasing the land granted him by said treaty be divided among them equally, viz: Mon-si-moh, or Moose Dung, Bay-sha-bah-noke, O-she-now-ah-sheak, Negon-e-bin-ace, Ay-sin-e-wub-eak, and Bay-mway-way-bin-ace.

Agent Allen's letter and the affidavits are submitted herewith for your further information in the premises.

Very respectfully, your obedient servant,

THOS. P. SMITH,
Acting Commissioner.

(McPherson) H.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, April 23, 1895.

The Commissioner of Indian Affairs.

SIR: I have considered your communication of the 9th instant, and accompanying affidavits relative to the heirship of the estate granted old Chief Moose Dung, and concur in your recommendation that the following parties be determined to be the heirs of said chief for the purposes of the lease to Ray W. Jones, and that the rents arising from leasing the land granted him by the treaty of October 2, 1863 (13 Stat., 669), be divided among them equally, viz: Mon-

si-moh, or Moose Dung, Bay-sha-bah-noke, O-she-now-ah-sheak, Ne-gon-e-bin-ace, Ah-sin-e-wub-eak, and Bay-mway-way-bin-ace.

The papers accompanying your communication are herewith returned.

Very respectfully,

WM. H. SIMS,
Acting Secretary.

2803, Ind. Div., '95.
Seven enclosures.

Refer in reply to the following : Land, 18627, 1895.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, May 4, 1895.

Robert M. Allen, Esq., U. S. Indian agent, White Earth agency, Minnesota.

SIR: I am in receipt of your letter of March 30, 1895, in obedience to office instructions of February 4, 1895, with which you submit the affidavits of persons claiming heirship in the estate of old Chief Moose Dung and affidavits of chiefs and head men of the tribe in support of the claims of the respective parties; this in order that the department might determine who are the legal heirs of old Chief Moose Dung for the purpose of distributing the proceeds arising from renting a portion of the lands granted him by the treaty of October 2, 1863 (13 Stats., 669), to Ray W. Jones. Based upon the affidavits submitted, you state that you have no doubt but that the present Moose Dung, or Mon-si-moh, Bay-sha-bay-noke, O-she-now-ah-sheak, Ne-gon-e-bin-ace, Ay-sin-e-wub-eak, and Bay-mway-way-bin-ace are the only living heirs of old Chief Moose Dung, and that they are entitled to share equally in said estate.

In reply I have to advise you that the matter was submitted to the Secretary in office letter of April 9, 1895, in which this
239 office concurred in your conclusions and recommended that the proceeds arising from the Jones lease be divided equally between said parties.

I am in receipt of a letter thereto from the acting Secretary, dated April 23, 1895, as follows:

"I have considered your communication of the 9th instant and accompanying affidavits relative to the heirship of the estate granted old Chief Moose Dung, and concur in your recommendation that the following parties be determined to be the heirs of said chief for the purposes of the lease to Ray W. Jones, and that the rents arising from leasing the land granted him by the treaty of October 2, 1863 (13 Stats., 669), be divided among them equally, viz: Mon-si-moh, or Moose Dung, Bay-sha-bah-noke, O-she-now-ah-sheak, Ne-gon-e-bin-ace, Ay-sin-e-wub-eak, and Bay-mway-way-bin-ace. The papers accompanying your communication are herewith returned."

You are accordingly directed to distribute the proceeds of the said Ray W. Jones lease that are now in your hands or that may

come into your hands in the future in accordance with the decision of the department.

Very respectfully,

THOS. P. SMITH,
Acting Commissioner.

(McPherson) L.

DEFENDANT'S EXHIBIT 17.

This agreement made and entered into this 19th day of July, A. D. 1895, by and between Mon-si-moh, Bay-shab-o-noke, Oh-shin-e-wash-eak, Bim-way-way-be-nac, Ne-gon-e-binance, and Oh-sin-e-wah-beak, parties of the first part, children and heirs-at-law of the late Mon-o-mo, commonly known as Chief Moose Dung of the Red Lake band of Chippewa Indians, and Ray W. Jones, of the city of Minneapolis, county of Hennepin, and State of Minnesota, party of the second part,

Witnesseth, that the parties of the first part, for and in consideration of the rents and covenants hereinafter mentioned and to be paid and performed by the said party of the second part, have demised, leased and let, and by these presents do demise, lease and let unto the said party of the second part, the following-described lands and tenements, viz: Lot one (1), in section thirty-four (34), town one hundred fifty-four (154), range forty-three (43), west, county of Polk and State of Minnesota, and more particularly described as follows: Commencing at the northeast corner of the plat of the village of Thief River Falls, thence east to the middle of Red Lake river, thence down the thread of the stream of said river to the plat of said Thief River Falls, thence north to the place of beginning, together with all appurtenances and riparian rights thereunto belonging, for the period of twenty (20) years from and after the 20th day of July, A. D. 1894, to have and to hold the above-rented premises to the said party of the second part, his heirs, executors, administrators and assigns, for and during the full term aforesaid. And the said party of the second part, for himself, his heirs, executors, administrators and assigns, agrees to and with the said parties of the first part to pay the rent according to the conditions of that certain lease made and executed by and between Mon-si-moh, commonly called Moose Dung and Ray W. Jones, and the approval of said lease, duly made by the Department of the Interior of the United States of America on the 13th day of November, A. D. 240 1894, and the acceptance of said terms of approval by the said Ray W. Jones on the 16th day of November, 1894, and the acceptance of the terms of said approval by said Mon-si-moh, on the 5th day of December, A. D. 1894, a true copy of which is hereto annexed marked Exhibit "A," and made a part hereof, all of which was duly recorded on the 24th day of January, 1895, in Book "F," of Miscellaneous on pages 207-209 in the office of the register of deeds in and for the county of Polk and State of Minnesota.

It is hereby mutually covenanted and agreed by and between the parties hereto that the party of the second part shall perform all the covenants and agreements contained herein and in said lease, approval and acceptance Exhibit "A," and that in consideration thereof,

said parties of the first part do hereby covenant and agree that the said party of the second part shall hold, occupy and enjoy said premises for and during the period mentioned in said lease, approval and acceptance, Exhibit "A."

In testimony whereof both parties have hereunto set their hands and seals this 19th day of July, A. D. 1895.

MON-SI-MOH. ^{his} x [SEAL.]
mark.

BAY-SHOB-O-NOKE. ^{her} x [SEAL.]
mark.

C-SHIN-E-WASH-EAK. ^{his} x [SEAL.]
mark.

BIM-WAY-WAY-BIN-ACE. ^{his} x [SEAL.]
mark.

NE-GON-E-BIN-NANCE. ^{his} x [SEAL.]
mark.

OH-SIN-NE-WAH-BEAK. ^{his} x [SEAL.]
mark.

RAY W. JONES. [SEAL.]

Signed, sealed, and delivered in the presence of—

JAMES A. KELLOGG,

W. A. ELLIOT,

As to Ray W. Jones.

P. S. WARE,

C. J. KNOX,

As to Mon-si-moh, Bay-shob-e-noke.

P. S. WARE,

J. N. WHITMORE,

As to Bim-way-way-bin-ace.

WM. R. SPEARS.

JULIA R. SPEARS.

STATE OF MINNESOTA, }
County of Beltrami, } ss:

I hereby certify that on the 20th day of July, A. D. 1895, personally appeared before me Mon-si-moh, Ne-gon-e-be-nance, Bay-shob-o-noke, Oh-sin-e-wub-eak, and O-she-nah-ah-sheak, known to me to be the persons described in and who executed the foregoing and hereto annexed instrument, and each acknowledged that they executed the same as their free act and deed and for the purposes therein set forth, and that the contents thereof was made known to them in their native language.

[SEAL.]

W. R. SPEARS,
Notary Public, Beltrami Co., Minn.

STATE OF MINNESOTA, } ss:
 County of Polk,

John B. Russell, being first duly sworn, upon oath deposes and says that he is a Chippewa; half-breed; that he can read, write, and talk English and can understand and converse fluently with the Chippewa Indians in their native tongue and language, and that he has at different times been employed by the United States Government as an interpreter.

Affiant says that he is personally acquainted with Mon-si-moh and Bay-shob-e-noke; that on the 24th day of July, 1895, he interpreted the foregoing instrument to the aforesaid persons and fully explained and made known the nature thereof to them in
 241 their own language, and that after such interpretation and explanation they subscribed the same, and in response to the notary's inquiry interpreted to them by him they each severally acknowledged the same to be his and her free act and deed and for the purposes therein set forth.

JOHN B. RUSSELL.

Subscribed and sworn to before me on this 25th day of July, 1895.

[SEAL.]

C. J. KNOX,
 Notary Public, Polk Co., Minn.

STATE OF MINNESOTA, } ss:
 County of Polk,

On this 24th day of July, 1895, personally appeared before me Mon-si-moh and Bay-shob-o-noke, to me personally known to be the persons described in the foregoing instrument, and who, after the same had been interpreted and explained to them in the Chippewa language by a competent interpreter, subscribed the same and acknowledged the same to be their free act and deed for the purpose therein set forth.

[SEAL.]

C. J. KNOX,
 Notary Public, Polk Co., Minn.

STATE OF MINNESOTA, } ss:
 County of Polk,

John Jerome, being first duly sworn, upon oath deposes and says that he is a Chippewa half-breed and resides with the Chippewa Indians on the Red Lake Indian reservation, in Minnesota; that he can talk English and can understand and converse fluently with the Chippewa Indians in their native tongue and language.

Affiant says that he is personally acquainted with Bin-way-waybi-nance, a Chippewa Indian; that on the 25th day of July, 1895, he interpreted the foregoing instrument to said Bin-way-waybi-nance and fully explained and made known the nature thereof to him in the Chippewa language, and that after such interpretation and explanation he subscribed the same, and in response to the notary's inquiry interpreted to him by affiant he acknowledged that

he executed the same as his free act and deed for the purpose therein set forth.

JOHN JEROME. ^{his}
x
mark.

Witnesses to mark :

P. S. WARE.

J. N. WHITMORE.

Subscribed and sworn to before me on this 25th day of July, 1895.

[SEAL.]

C. J. KNOX,
Notary Public, Polk Co., Minn.

STATE OF MINNESOTA, } ss :
County of Polk,

On this 25th day of July personally appeared before me Bin-way-bi-nance, to me personally known to be the person described in the foregoing instrument, and who, after the same had been interpreted and explained to him in the Chippewa language by a competent interpreter, subscribed the same and acknowledged the same to be his free act and deed for the purpose therein set forth.

[SEAL.]

C. J. KNOX,
Notary Public, Polk Co., Minn.

STATE OF MINNESOTA, } ss :
County of Hennepin,

Be it known that on this 27th day of July, A. D. 1895, before me personally appeared Ray W. Jones, by me well known to be the identical person described in and who executed the foregoing instrument, and he acknowledged that he executed the same
242 freely and voluntarily as his free act and deed for the uses and purposes therein expressed.

[SEAL.]

JAMES A. KELLOGG,
Notary Public, Hennepin Co., Minn.

EXHIBIT "A."

This contract and agreement made this twentieth (20th) day of July, A. D. 1891, by and between Mon-si-moh (commonly called Moose Dung) son, heir and successor of Mons-o-mo (also commonly called Moose Dung) party of the first part, and Ray W. Jones, party of the second part,

Witnesseth : That said party of the first part, in consideration of the agreements and covenants hereinafter mentioned, does hereby lease and let unto the party of the second part, his heirs and assigns, all that piece or parcel of land known and described as follows : Lot one (1) in section thirty-four (34), town one hundred and fifty-four (154), range forty-three (43), county of Polk and State of Minnesota, and more particularly described as follows : Commencing at the northeast corner of the plat of Thief River Falls, thence east to the middle of Red Lake river, thence down the thread of

the stream of said river to the plat of said Thief River Falls; thence north to the place of beginning; together with all the appurtenances and riparian rights thereunto belonging, for the period of twenty years from this date at and for the yearly rental of two hundred dollars per year, payable quarterly in advance.

And the said second party for and in consideration of the foregoing does hereby covenant and agree to and with the party of the first part, that he will well and truly pay to the party of the second part the rent hereinbefore specified, and in addition thereto will procure from the Government of the United States of America and its proper officers written evidence of the title to the tract of land given to Mons-o-mo by treaty made at Old Crossing of Red Lake river in the State of Minnesota the second day of October, A. D. 1863, or a patent of such title.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

MON-SI-MOH. ^{his} x [SEAL.]
^{mark.}
 RAY W. JONES. [SEAL.]

In presence of—

W. R. SPEARS.

C. J. KNOX.

W. B. McNEILL.

JAMES A. KELLOGG,

EDSON J. KELLOGG,

To Ray W. Jones.

STATE OF MINNESOTA, }
 County of Beltrami, } ss:

I hereby certify that on the 20th day of July, A. D. 1894, personally appeared before me Mon-si-moh (commonly called Moose Dung), to me personally known to be the person described in the foregoing instrument and to whom I fully explained and made known the nature thereof in his own language, and after such explanation he subscribed the same and acknowledged the same to be his free act and deed and for the purposes therein set forth.

[SEAL.]

W. R. SPEARS,
 Notary Public, Beltrami Co., Minn.

STATE OF MINNESOTA, }
 County of Hennepin, } ss:

On this 24th day of July, A. D. 1894, before me, a notary public within and for said county, personally appeared Ray W. Jones, to me known to be the person described in and who executed
 243 the foregoing instrument, and acknowledged that he executed the same as his free act and deed and for the purposes therein stated.

[SEAL.]

JAMES A. KELLOGG,
 Notary Public, Hennepin Co., Minn.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY, November 13, 1894.

The within lease from Mon-si-moh, or Moose Dung, to Ray W. Jones, dated July 20, 1894, is hereby approved upon the following conditions: The rent shall be \$400 per annum, payable quarterly, in advance, and shall be paid to the agent in charge of the Chippewa Indians in Minnesota and by him paid to the parties found to be entitled thereto by this department.

Within six months next preceding the expiration of each period of five years from the date thereof the rental value shall be ascertained and the rent readjusted to that value. If the parties are unable to agree upon the amount to be paid for the ensuing five years, which shall also meet the approval of the Secretary of the Interior, then the lessor, his heirs or assigns, may appoint an appraiser, to be approved of by the Secretary of the Interior, and the lessee, his heirs or assigns, may also select an appraiser, and said two appraisers may select a third, or in case of their failure to agree in such selection, then upon application of either party to said lease, ten days' notice thereof being given to the other party, to the judge of probate of the county in which the land is situated, said judge may appoint a third appraiser, and the three appraisers so appointed, or a majority of them, shall fix and determine the amount of rent to be paid for the five years next ensuing.

The said premises, nor any part thereof, shall not be sublet without the written consent of the lessor, his heirs or assigns, and the approval of the Secretary of the Interior.

This approval shall not become operative until the terms and conditions herein recited shall have been accepted in writing by the lessee.

WM. H. SIMS,
Acting Secretary.

I hereby accept and agree to the terms and conditions of the above approval of lease.

RAY W. JONES.

Dated Nov. 16, 1894.

For a valuable consideration I agree to the terms of the above approval and accept the same.

MON-SI-MOH. his
x
mark

Dated Dec. 5, 1894.

Witnesses to Mon-si-moh's mark:

W. R. SPEARS.
LEWIS P. JOHNSON.
F. R. KRATKA.
E. G. MAXWELL.

OFFICE OF REGISTER OF DEEDS,
COUNTY OF POLK, MINNESOTA.

I hereby certify that the within instrument was filed in this office

for record on the 24th day of January, A. D. 1895, at 9 o'clock a. m., and was duly recorded in Book P of Misc., on pages 207-209.

ALBERT WICKSTROM,

Register of Deeds.

OFFICE OF REGISTER OF DEEDS,
COUNTY OF POLK, MINNESOTA.

I, Albert Wickstrom, register of deeds of said county and State, do hereby certify that I have compared the foregoing paper-writing with the original record now remaining in this office, and
244 that the same is a correct transcript therefrom and of the whole of said original record as the same now appears in Book F of Misc., page 249.

In witness whereof I have hereunto subscribed my name and affixed my official seal at the city of Crookston, in said county, this 29th day of July, A. D. 1895.

ALBERT WICKSTROM,

Register of Deeds.

DEFENDANT'S EXHIBIT 18.

UNITED STATES OF AMERICA:

In the United States Circuit Court, Eighth Circuit, District of Minnesota, Sixth Division.

MON-SI-MOH, Commonly Called MOOSE DUNG,
Complainant,

vs.

PATRICK MEEHAN and JAMES MEEHAN, Defendants.

} Bill in Equity.

To the judges of the circuit court of the United States for the district of Minnesota:

I.

Humbly complaining, sheweth unto this honorable court your orator, Mon-si-moh, commonly called Moose Dung, that he is a Chippewa Indian and a member of the tribe of the Red Lake band of Chippewa Indians, and dwells among said Indians on their reservation, known as the Red Lake reservation, and that he was a member of said band and tribe at all the times hereinafter mentioned, and that he is the son and heir-at-law and successor of Mons-o-mo, commonly called Moose Dung, who was also in his lifetime chief of said Red Lake band of Indians, and your orator has ever since the death of Mons-o-mo been and still is acting as chief and head man in and of said tribe of Red Lake band of Chippewa Indians.

II.

That the defendants, Patrick Meehan and James Meehan, are citizens of the State of Wisconsin, and resident in the city of Milwaukee, in said State, and were such citizens at all the times hereinafter mentioned.

III.

Further complaining, your orator shows unto this honorable court that at the Old Crossing of Red Lake river, in the State of Minnesota, on the 2nd day of October, in the year 1863, there was entered into between the United States of America, through its duly authorized and appointed commissioners, and the Red Lake and Pembina bands of Chippewa Indians, by and through their chiefs, head men, and warriors, a treaty, wherein and whereby the said Red Lake and Pembina bands of Chippewa Indians did cede, sell, and convey unto the United States all their right, title, and interest in and to all the lands owned and claimed by them in the State of Minnesota and Territory of Dakota within the following-described boundaries, to wit:

Beginning at the point where the international boundary between the United States and the British possessions intersects the shore of the Lake of the Woods; thence in direct line southwesterly to the head of Thief river; thence down the main channel of said Thief river to its mouth on the Red Lake river; thence in a southeasterly direction in a direct line towards the head of Wild Rice river to the point where such line would intersect the northwestern boundary of a tract ceded to the United States by a treaty concluded at Washington on the 22nd day of February, in the year 1855, with the Mississippi, Pillaber, and Lake Winnebigoishish bands of Chippewa Indians; thence along the said boundary line of the said cession to the mouth of Wild Rice river; thence up the main channel of the Red river to the mouth of the Shayenne; thence up the main channel of the Shayenne river to Poplar Grove; thence in a direct line to the Place of Stumps, otherwise called Lake Chicot; thence in a direct line to the head of the main branch of Salt river; thence in a direct line due north to the point where such line would intersect the international boundary aforesaid; thence eastwardly along said boundary to the place of beginning.

And in and by said treaty in article nine thereof it was, among other things, stipulated and agreed that, upon the urgent request of the Indians, parties to this treaty, there should be set apart from the tract thereby ceded a reservation of 640 acres near the mouth of Thief river for the Chief Moose Dung, and a like reservation of 640 acres for the Chief Red Bear on the north side of Pembina river.

IV.

That afterwards and on the 21st day of April, A. D. 1864, said treaty was by a resolution of the Senate of the United States of America duly ratified, confirmed, and accepted, which said treaty and said resolution were afterwards, on the 25th day of April, A. D. 1864, by the President of the United States duly accepted, ratified, and confirmed and promulgated, and the same ever since has been and still remains in force and effect.

V.

That after the acceptance, confirmation, and promulgation of said treaty by the President of the United States, as hereinbefore set forth,

the said Mons-o-mo selected in pursuance of the provisions of said article nine, hereinbefore mentioned, the lands and premises hereinafter more particularly described, and built thereon a house in which he dwelt until the time of his death, which occurred between the date of said treaty and the 10th day of September, A. D. 1879, the exact date your orator is unable to more particularly state and show, and that after his death your orator dwelt in said house on said land when not absent upon the Red Lake reservation among his band of Chippewa Indians.

VI.

That on the 10th day of September, A. D. 1879, at the mouth of Thief river in the State of Minnesota, your orator made known to the United States agent for the Chippewa Indians in the State of Minnesota, of the selection of lands theretofore made by the deceased Mons-o-moh, and which are more particularly described as follows:

All of fractional section number 27, all of fractional section number 34, and the east one-half of the east one-half of the west one-half of section number 28, and the northeast quarter of the northeast quarter of section 33, all in township number 154 north of range 43 west, which said lands and premises are now in the county of Polk and State of Minnesota.

VII.

That on said date said United States Indian agent in writing 246 ing duly informed the Commissioner of Indian Affairs of said selection, and said Indian agent also notified the United States land office at Crookston, in said State, and also the surveyor general at St. Paul, in said State, and afterwards, and on or about the 30th day of September, A. D. 1879, the Commissioner of Indian Affairs transmitted to the Secretary of the Interior of the United States the information which said Commissioner of Indian Affairs had received from said United States Indian agent, and the Secretary of the Interior, on the said 30th day of September, A. D. 1879, duly transmitted the same to the Commissioner of the General Land Office of the United States, and in accordance with the recommendation of the Commissioner of Indian Affairs did approve the selection hereinbefore set forth, and did direct said Commissioner of the General Land Office of the United States to take the necessary steps for the protection of said lands so reserved for the benefit of those entitled as contemplated by the treaty stipulations, and in pursuance thereof said Commissioner of the General Land Office did cause to be set apart and designated the lands selected by Chief Moose Dung under treaty of October 2, 1863 (13 Stats., 669) (approved Sept. 30, 1879), the lands and premises following, to wit:

Section 27 of township 154 north of range 43 west, and lots 1, 2, 3, 4, and 5 of said section, also section 28, in said township and range, and also the northwest quarter and the east one-half of the northwest quarter and the southeast quarter and the east one-half of the southeast quarter of said section 28, and also section 34, in said township and range, and also lots 1, 2, 3, 4, and 5 of section 27

and the northeast quarter and the east one-half of the northwest quarter and the southeast quarter and the east one-half of the southwest quarter of said section 28, and lot one of section 34, in said township and range, and containing 653 and $\frac{7}{10}$ acres.

VIII.

Your orator further represents that said hereinbefore-mentioned governmental descriptions and subdivisions of land lie upon and along the shore of Thief river and Red Lake river, giving a water frontage of something over two miles, and that the same is chiefly valuable by reason of said water frontage upon which may be placed saw-mills to be used in sawing into lumber logs from the timber growing on the Red Lake Indian reservation and other lands on the waters tributary to Red Lake and the Red Lake river, which said logs could be easily and cheaply conveyed from said timber lands to the mills on the lands hereinbefore mentioned and described, and that your orator could lease said lands fronting on said rivers in suitable quantities for mill sites, and obtain therefrom rental in a large sum, much greater than would be necessary for the maintenance of your orator.

IX.

Your orator shows unto this honorable court that he is an unlettered redman and has always lived so among the redmen and has never attended any school, and is a member of the Red Lake band of Chippewa Indians and an annuitant of the Government of the United States, and a chief or head man in said tribe of Indians, and dwells among them on their reservation, and is totally unacquainted with the business methods of the white man and the laws of the white man.

247

X.

Your orator further shows unto this court that he is informed, which information he believes to be true and charges the fact to be, the defendants claim to have a paper-writing, a copy of which is hereto annexed, marked Exhibit "A," and made a part of this your orator's bill of complaint, and that said defendants have caused the same to be recorded in the office of the register of deeds in and for the county of Polk, in said State of Minnesota, on or about the 30th day of Nov., A. D. 1891, in Book E of Miscellaneous Records, on page 69 of the records in said office, and that said defendants claim that by and under said paper-writing they are entitled to hold and possess the land and premises therein described for the period of ten years from the date thereof, at and for an annual rental of \$25.00, to be paid annually, and that by reason of the recording of said paper-writing and the claim of said defendants your orator is unable to lease any part or portion of said lands to other persons, and is

thereby prevented from getting greater gains and profits from said lands; that said lands are in the state of nature, wholly uncultivated, unoccupied, and unproductive except that your orator is enabled to lease the same for pasturage and to sell therefrom some gravel, and that your orator is in possession thereof.

XI.

Your orator, further complaining, states and charges the facts to be that said paper-writing was obtained from your orator upon the representations made by the defendants to your orator that it was an application for a lease desired by them, the defendants, to be by them forwarded to the Government of the United States for the purpose of procuring, with the consent of the United States, a lease of a part or portion of the hereinbefore-described lands, and that your orator took no advice or counsel with any person or persons whatever and did not know or understand what the contents or import of said paper-writing was nor what effect it would have upon the right of your orator, and that the same was not interpreted to him in his own language, and that your orator never intended to make any such contract as is contained in said paper-writing, and that said paper-writing is not a contract of your orator, and that your orator never intended to make any such contract and never knew that he was making any such contract, and that his signature thereto was procured from your orator by false representations, undue influence, and overreaching, when he was absent from his people and from any one that could talk his language and from any one with whom he could advise concerning the same and away from the reservation on which he resides, and is against the just rights and best interests of your orator, and that your orator is remediless except in a court of equity and without a remedy in a court of law.

To the end, therefore, that each of said defendants may full, true, and direct answers make to the foregoing bill of complaint, and that your orator may be relieved concerning the matters herein alleged—

Wherefore your orator prays this honorable court to order and decree that said paper-writing made by the defendants be delivered up to be cancelled and held for naught, and that the record thereof in the office of the register of deeds in and for the county of
248 Polk aforesaid may be cancelled and expunged and the cloud thereby created removed from the lands in the said paper-writing described, and that your orator have such other and further relief, the premises being considered, as to this honorable court shall seem meet and proper, and that your orator will ever pray.

May it please this honorable court to grant unto your orator a writ of subpoena, issuing out of and under the seal of this honorable court, directed to the defendants, James Meehan and Patrick Meehan, and commanding them and each of them, on a day and under

a penalty therein to be named, to be and appear before this honorable court and make answer to your orator's bill of complaint.

MON-SI-MOH. ^{his}
x
mark.

Witnesses to mark :

M. C. ENGLISH.
JULIA R. SPEARS.

JAMES A. KELLOGG,
*Solicitor for Complainant, 1129 Lumber
Exchange, Minneapolis, Minn.*

STATE OF MINNESOTA, }
County of Beltrami, } ss :

Mon-si-moh, commonly called Moose Dung, the complainant in the foregoing bill of complaint, to me personally known to be such complainant, came personally before me and, being first duly sworn, did depose and say that he is the complainant in the foregoing bill of complaint, and that said bill of complaint was read and interpreted to him in his native language, and that he knows the contents thereof, and that the same is true of his own knowledge except as therein stated to be on information and belief, and as to those matters he believes it to be true.

MON-SI-MOH. ^{his}
x
mark.

Subscribed and sworn to before me this 20th day of June, 1895.
[SEAL.] W. R. SPEARS,

Notary Public, Beltrami County, Minnesota.

JAMES A. KELLOGG,
*Solicitor for Complainants, 1129-'31 Lumber
Exchange, Minneapolis, Minnesota.*

EXHIBIT "A."

Know all men by these presents that I, Moose Dung, of Thief River Falls, Polk county, Minnesota, party of the first part, for and in consideration of the sum of \$25.00 to me in hand paid by Patrick Meehan and James Meehan, of the city of Milwaukee and State of Wisconsin, parties of the second part, the receipt whereof is hereby acknowledged, has bargained and leased, and by these presents does demise, grant, bargain, and lease, unto the said parties of the second part, their heirs and assigns, for the full term of ten years from date, at an annual rental of \$25.00 per annum, to be paid annually on the thirtieth day of October of each year, the following-described premises, situated in the county of Polk and State of Minnesota, viz : Ten feet wide off the bank of the Red Lake river and Thief river along the water's edge as the bank is flooded by the certain dam constructed across the said Red Lake river, known as the Kentzschmer dam, commencing where the (S. W.) southwest corner of lot

one (1), in section 34, township 154, range 43, intersects the Red Lake river, thence north along west shore of Red Lake river to Thief river; thence along the westerly shore of Thief river across lot one (1) of section 34 and lots (4) four, (3) three, (2) two, (1) one, in Moose Dung's reservation, in township 154, range 43, to a point where the north line of Moose Dung's reservation and the south line of section 21 intersects the Thief river, all of said land being in township 154, range 43, same to be used for storing logs, erecting piers and booms and maintaining same to the design of the parties of the second part, and for the use and purposes and for all purposes connected with lumbering industry, thereby to convey all shore rights for the term of this lease for lumbering purposes; to have and to hold the same unto the said parties of the second part, their heirs and assigns, for the full term of ten years from date hereof; and the said parties of the second part agree at the end of the term of this lease to quietly surrender possession of said premises unto the said first party, his heirs or assigns.

In testimony whereof the said party of the first part has hereunto set his hand and seal this 7th day of November, 1891.

MOOSE DUNG. ^{his} x [SEAL.]
mark.

In presence of—

THEO. LA BESSIONERE.
CHARLES B. WELLS.

STATE OF MINNESOTA, }
County of Polk, } ss :

On the 7th day of November, 1891, personally appeared before me, a notary public within and for said county, Moose Dung, to me known to be the person described in and who executed the foregoing instrument, and acknowledged he signed it freely.

THEO. LA BESSIONERE,
Notary Public, Polk Co., Minn.

UNITED STATES OF AMERICA, }
District of Minnesota, Sixth Division, } ss :

I, Oscar B. Hillis, clerk of circuit court of the United States for the district of Minnesota, do hereby certify that I have carefully compared the foregoing paper-writing with the original thereof, which is in my custody as such clerk, and that such copy is a correct copy of such original and of the whole thereof in the cause therein named.

Witness my hand as clerk and the seal of said court. Done at my office, in Fergus Falls, Minnesota, on this 15th day of July, A. D. 1895.

[SEAL.]

OSCAR B. HILLIS,
By L. A. LEVORSEN, Deputy.

APPENDIX.

DEFENDANT'S EXHIBIT 6.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, Jan. 10, 1895.

I, D. M. Browning, Commissioner of Indian Affairs, do hereby certify that the paper hereto attached is a true copy of the original as the same appears on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed on the day and year first above written.

[SEAL.]

D. M. BROWNING,
Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, November 13, 1895.

The Commissioner of Indian Affairs.

SIR: I have considered the question of the approval of two leases executed by Mon-si-moh, or Moose Dung, a Chippewa Indian, one to Ray W. Jones, dated July 20, 1894, and the other to P. and J. Meehan, dated Aug. 10, 1894, submitted with your letter of October 30, 1894.

The leases cover practically the same land, although that to Meehan includes a small tract not in that to Jones. The land is a part of the tract set apart to old Chief Moose Dung, the father of the lessor, under the provision of the treaty of October 2, 1863 (13 Stats., 667), which reads as follows:

"Article IX. Upon the urgent request of the Indians, parties to this treaty, there shall be set apart from this tract, hereby ceded, a reservation of six hundred and forty (640) acres near the mouth of Thief river for the Chief Moose Dung and a like reservation of six hundred forty acres (640) for the Chief Red Bear on the north side of Pembina river."

A joint resolution approved August 4, 1894, provides as follows:

"That the Secretary of the Interior be, and he is hereby, authorized to approve, if in his discretion he deems the same proper and advisable and upon such terms and limitations as he may impose, that certain lease made and executed by Mon-si-moh (commonly called Moose Dung) to Ray W. Jones of lot one (1), in section thirty-four (34), in town one hundred and fifty-four (154) north, of range forty-three (43) west, in the county of Polk and State of Minnesota, which said lease is now on file in the Office of Indian Affairs."

There has been a contest between the parties interested for control of this land and many charges made as to the influences brought to bear upon the Indian to secure the execution of the lease. The matter was investigated by a clerk from your office detailed for that purpose, and all the facts and circumstances relating thereto have been fully developed.

You state several objections which are, in your opinion, pertinent to both leases and sufficient to prevent their approval unless it be that the joint resolution heretofore quoted operates to relieve the Jones lease from those objections. You say, "The main object against the Jones lease is based upon the fact that Moose Dung has from the first and still insists that the lease was misinterpreted to him, and that when he signed it he thought he was signing an application for a lease and not a lease," and refer to several telegrams from him in support of this statement.

In conclusion you submit the two leases, with the correspondence relating to them, the report of Mr. Murchison, and briefs and arguments, with the recommendation that neither lease be approved.

The point is raised in behalf of Mr. Jones that because of the character of Moose Dung's title this department has no jurisdiction over the matter, to approve or disapprove his lease. In view of the fact that Congress has given this department authority in the premises, and that Mr. Jones has invoked its action, this point cannot be sustained.

Said joint resolution obviates other objections to this lease, such as that it was not executed in triplicate on the forms provided by your office and acknowledged before the proper Indian agent, that it is for a longer period than is provided for in the general
251 provision of law as to such leases, and that no showing is made as to the Indian's disability by reason of age or otherwise. These matters need not be further considered in connection with the Jones lease, except in so far as they may affect the exercise of my discretionary power under said joint resolution. They do, however, apply to the Meehan lease as held by you and are sufficient to prevent its approval.

I am convinced from the testimony submitted that the conditions of the lease were fully explained to Moose Dung before he executed the same, and that he fully understood its terms. It may be true that he did not believe the lease would be approved and that he could secure the \$50 paid for the first quarter for nothing, and thus be that much ahead, but such sharp dealings should and will be discountenanced by the department. The fact is established that Moose Dung appeared entirely satisfied with the terms of this lease until he was told that it was for the term of twenty-five years. This was not true, and hence his objection had no foundation. Furthermore the lessor has indicated his satisfaction with the terms of said lease by accepting payment in advance for the second quarter of the first year. He cannot be heard to say that he did this in ignorance of the terms and conditions of the instrument, because all that had been explained to him during the investigation. In addition to all this, the department is in receipt of a statement under oath of Mon-si-moh setting forth that he is entirely satisfied with the lease and desires its approval. This statement was made in the presence of three witnesses and executed before the judge of the district court. The main objection to this lease, as set forth in your letter, is entirely obviated.

The rental of \$200 per annum provided in the lease is not satis-

factory to the department as to amount, and I have inserted as a condition of approval that the rental shall be at the rate of \$400, payable as provided in such lease. Inasmuch, however, as the rental value of this land may change in the future I have thought it for the interest of the Indian to incorporate in my approval thereof a condition providing for the readjustment of the rent at the expiration of each period of five years during the continuance of said lease.

I have also inserted a condition prohibiting the subletting of any portion of the premises, except upon the consent of the Indian and the approval of this department.

A question has arisen as to whether the lessor is in fact the sole heir and representative of his father, the elder Mon-si-moh, but it was inquired into at the investigation heretofore made. You state that Mon-si-moh has two sisters, but information received since the matter has been under consideration here is to the effect that he has one sister. This man has, however, been in exclusive possession and control of the land since his father's death. I have concluded that under the circumstances the same course should be taken here as in the matter of the lease of the Red Bear tract, and have inserted in the approval a condition that the rent shall be paid to the agent in charge of the White Earth agency, to be by him paid to the parties found to be entitled thereto.

I have carefully considered this whole matter and have concluded that it is proper and desirable to approve the lease. It provides for the Indian an income out of property which he cannot himself use or make productive. I have therefore approved said lease upon the following conditions:

The rent shall be \$400 per annum, payable quarterly, in advance, and shall be paid to the agent in charge of the Chippewa Indians in Minnesota and by him paid to the parties found to be entitled thereto by this department.

Within six months next preceding the expiration of each period of five years from the date thereof the rental value shall be ascertained and the rent readjusted to that value. If the parties are unable to agree upon the amount to be paid for the ensuing five years, which shall also meet the approval of the Secretary of the Interior, then the lessor or his heirs or assigns may appoint an appraiser, to be approved by the Secretary of the Interior, and the lessee, his heirs or assigns, may also select an appraiser, and said two appraisers may select a third, or in case of their failure to agree in such selection, then, upon application of either party to said lease, ten days' notice thereof being given to the other party, to the judge of probate of the county in which the land is situated, said judge may appoint a third appraiser, and the three appraisers so appointed or a majority of them shall fix and determine the amount of rent to be paid for the five years next ensuing.

The said premises or any part thereof shall not be sublet without the written consent of the lessor, his heirs or assigns, and the approval of the Secretary of the Interior.

This approval shall not become operative until the terms and

conditions herein recited shall have been accepted in writing by the lessee.

The papers accompanying your letter of October 30 and the papers filed in this department are herewith transmitted for the files of your office.

Very respectfully,

WM. H. SIMS,
Acting Secretary.

8023, Ind. Div., '94. 84 enclosures.

JAMES A. KELLOGG, a witness recalled in behalf of the defendant in surrebuttal, testified as follows:

Mr. RHINEHART: This is taken subject to the objection of the complainants that this testimony is introduced only in anticipation of the claim, not yet allowed, of the right to file a supplemental answer. In case that supplemental answer is not allowed to be filed the surrebuttal testimony would not be competent in the case.

The WITNESS: Before the lease was signed by Moose Dung, on the 20th of July, 1894, I inquired of him, through Spears as interpreter, what, if any, brothers or sisters or the children of any deceased brother or sisters that he had, and was informed by the interpreter, after communicating my question to Moose Dung, that he had none.

No cross-examination.

Defendant rests.

Testimony closed.

STATE OF MINNESOTA, }
Hennepin County, } ss:

I, Richard A. Mabey, a notary public in and for the county of Hennepin, in the State aforesaid, do hereby certify that the foregoing depositions of Ray W. Jones, James A. Kellogg, Robert W. Allen, Paul Beaulieu, Charles J. Knox, John C. Lawler, Peter Graves, May-dwa-gun-on-ind, Ne-gon-e-bin-ace, Na-ah-tah-waub, Ay-sin-e-wub-eak, O-she-now-ah-sheak, Mah-gah-de-gwon-wad, Mrs. Julia R. Spears, William R. Spears, Curtis B. Wells, James Powers, Hans Langseth, John M. Whitman, Karl Krutzner, Day F. Stacy, Mays-ko-ko-noy-ay or Mon-si-moh or Moose Dung, Bay-mway-way-bin-ace, and Theophile La Bissoniere were taken before me at the times and in the places therein specified by agreement of counsel for the respective parties to this action; that the complainants in said cause were represented at the taking of the same by Messrs. Rhinehart and Lee, and the defendant by his counsel, James A. Kellogg, Esq., as therein appears.

That before deposing the said witnesses were by me personally sworn to tell the truth, the whole truth, and nothing but the truth in the cause now pending *the* in the United States circuit court for the district of Minnesota, in the fourth division thereof, wherein Patrick Meehan and James W. Meehan are complainants and Ray W. Jones is defendant.

It was stipulated by and between the counsel for the respective parties that the testimony of the several witnesses should be taken in shorthand by the examiner and afterwards reduced to writing, and that the signing and reading of the same by the respective witnesses should be waived, and that the depositions should have the same force and effect as though each and every deposition had been read over by the said witnesses and afterwards signed by them.

And I do further certify that I am neither attorney nor counsel for any of the parties in said depositions or caption named and am in nowise interested in the result of said cause.

In testimony whereof I have hereunto set my hand and notarial seal this 15th day of August, 1895.

RICHARD A. MABEY,

Special Examiner, Notary Public, Hennepin County, Minnesota.

254 United States Circuit Court for the District of Minnesota,
Fourth Division.

Term Minutes, September Term, A. D. 1895.

SEPTEMBER 17, 1895.

PATRICK MEEHAN and JAMES W. MEEHAN }
vs.
RAY W. JONES. }

This cause regularly coming on for hearing, the complainants appear by their solicitors, Orville Rinehart and C. D. O'Brien, and the and the defendant by his solicitors, James A. Kellogg and F. F. Davis.

Whereupon the same is argued on behalf of the complainants by Orville Rinehart, their solicitor, and further oral argument is waived by both parties, and the cause is duly submitted on printed briefs, and by the court taken under advisement.

Title of Cause.

Action to quiet title.

NELSON, J.:

I find the facts to be as follows:

A treaty was concluded October 2, 1863, between the United States and certain Chippewa Indians, article 9 whereof provides: "That upon the urgent request of the Indians, parties to this treaty, there shall be set apart from the tract hereby ceded a reservation
255 of six hundred and forty acres (640) near the mouth of Thief river for the Chief Moose Dung." In accordance with this article of the treaty, Moose Dung, or Mon-si-moh, selected certain lands, but died before the same were surveyed; about September 10, 1879, a formal selection of those same lands was made which was approved by the Secretary of the Interior, and the lands set apart by the Government.

I further find that the property in controversy is a part of this

selection, and that a lease thereof was made and executed to complainants by the present Chief Mon-si-moh, eldest son of and successor to the old Chief Moose Dung, dated November 7, 1891, which is described as a strip of land ten feet wide off the bank of the Red river, conveying the shore rights for the purposes of lumbering for a period of ten years from date; that a lease was also executed July 20, 1894, to defendant by the same Mon-si-moh of a portion of the selected land, including the strip covered by complainants' lease, for a period of twenty years from date, which lease was thereafter modified and approved by the Secretary of the Interior; that the complainants have used the premises for lumbering, built a saw-mill adjacent thereto, with booms and appliances, and expended a certain amount of money thereon.

Conclusions: Defendant insists that Mon-si-moh had no such title as would enable him to make a valid lease unless the same was approved by the Government, and that complainants' lease is invalid because not so approved. The decisive question is whether under the terms of the treaty such a title to or interest in the lands selected was vested in Mon-si-moh as would empower him to make a valid lease of the premises in question to complainants. Defendant urges strongly that article 9 in effect excepts the selection from the operation of the treaty and leaves it unaffected thereby. I do not so interpret the language. The words are, "shall be set apart from the tract hereby ceded." The act of cession is completed; the title has passed to the Government, and, "upon the urgent request of the Indians, parties to this treaty," the Government is asked to set apart a reservation of six hundred and forty (640) acres for the chief. No restrictions or conditions subsequent are imposed, and in order to determine the title or interest of Mon-si-moh it is necessary to inquire what construction has been placed by the Government and the courts upon the words "set apart" and "reservation" as used in these treaties or in cases of a like nature. Section 18 of the organic act of Minnesota, passed by Congress March 3, 1849, provides that sections 16 and 36 in each township "shall be, and the same are hereby, reserved" for school purposes, and in the act of Congress of Feb. 26, 1857, authorizing the State government of Minnesota, we find that "seventy-two sections of land shall be set apart and reserved for the use and support of a State university." In neither of these cases has it ever been questioned but that a fee-simple title passed, and no patents have ever been issued or were necessary to confer title to these lands. *Gaines v. Nicholson*, 9 How., 365.

In *Glenn v. Glenn*, 41 Ala., 582, the court says: "To allot is usually understood as meaning to set apart a portion of a particular thing or things to some particular person;" and in *Best v. Polk*, 18 Wall., 112, where by the terms of a treaty there was no provision for a patent, and the term "allotted" was held to pass in full title. See also *Gaines v. Nicholson*, 9 How., 356. To the same effect is the case of *U. S. v. Brooks*, 10 How., 442, where it was held that the expression "shall be laid off"

gave the reserves a fee-simple title to the lands as fully as any patent from the Government could do.

In supplementary articles to the Choctaw treaty of Sept. 28, 1830 (7 Stat. at Large, 340), wherein no provision is made for patents, the terms "shall be entitled to," "there is allowed," "may locate," "shall be granted," "there is given," are used synonymously with respect to reservations. In *Newman v. Doe*, 4 How. (Miss.), 561, it was held that the word in a treaty "shall be entitled to a reservation" was equivalent to a grant. In *Niles v. Anderson*, 5 How. (Miss.), 365, the court says that the words "a reservation shall be granted" conveyed the fee, and that the terms reservation was equivalent to an absolute grant; and this doctrine was approved in the case of *Best v. Polk*, 18 Wall., 115, where it was said, "The treaty granted the land, but the location had to be fixed before the grant could become operative." In *Doe v. Wilson*, 23 How., U. S., 457, the language of the court was: "The treaty itself converted the reserved sections into individual property;" and in *Crews v. Burcham*, 1 Black, 357: "The equitable right to the lands when selected was perfect." See also *Prentice v. R. R. Co.*, 43 Fed. Rep., 275.

I am of the opinion, upon due consideration of the testimony, that it was the intention of both parties to the treaty that this reservation so set apart should be in the nature of a grant to Mon-si-moh, whereby he should acquire title to the same, burdened with no restriction or condition subsequent save that of selection. Further, that selection and location were only necessary to give identity, and thereupon such a title to or interest in the selected lands was vested in Mon-si-moh; that he could and did execute a valid lease of the strip in controversy to complainants, and that the approval of the Secretary of the Interior was not necessary and gave no additional force to the lease.

I hold, therefore, that the lease of November 9, 1891, by Mon-si-moh to complainants was and is a valid and subsisting demise of the land covered thereby, and that the rights and privileges therein contained should be vested and quieted in them as against the claims of defendant.

A decree will be entered accordingly.

Dated Nov. 9, 1895.

R. R. NELSON, *Judge*.

(Endorsed:) Filed Nov. 11th, 1895. Oscar B. Hillis, clerk, by R. C. Mabey, deputy. United States circuit court, district of Minnesota, fourth division. Patrick Meehan and James Meehan, complainants, vs. Ray W. Jones, defendant. In equity. September term, A. D. 1895. Decree.

257 This cause came on to be heard at this term, and was argued by counsel, and thereupon and upon due consideration thereof—

It is ordered, adjudged, and decreed, that the certain lease heretofore, on the 7th day of November, 1891, made by Moose Dung, otherwise called Mon-si-moh, to the complainants, demising and

II.

That the court erred in denying defendant's application for leave to file a supplemental answer.

III.

That the court erred in finding that the complainants had built a mill adjacent to the lands in question in this cause.

IV.

That the court erred in finding that article IX of the treaty of October 2nd, 1863, between the United States and the Red Lake and Pembina bands of Chippewa Indians, gave to the Indian Mon-si-moh such a title to or interest in the selected lands as vested in Mon-si-moh such a title that he could and did execute a valid lease of the strip in controversy to complainants, and that the approval of the Secretary of the Interior was not necessary and gave no additional force to the lease.

V.

That the court erred in finding that the lease of November 9th, 1891, by Mon-si-moh, to the complainants was and is a valid and subsisting demise of the land covered thereby, and that the rights and privileges therein contained should be vested and quieted in them as against the claims of defendant.

VI.

That the court erred in ordering a decree for the complainants.

VII.

That the court erred in not ordering a decree that the lease to defendant, approved by the Government of the United States, conveys rights superior to those conveyed under the lease to complainants.

VIII.

That the court erred in not finding that the title held by Mon-si-moh to the land in question is a reservation of an Indian and under control of the Government of the United States, and that any lease made by the Indian Mon-si-moh without the approval of the Government of the United States is inoperative and void, and conveys no rights to the lessee.

IX.

259 That the court erred in giving judgment for the complainants.

X.

That the court erred in not giving judgment for the defendant.

XI.

That the court erred in quieting title in the complainants to the entire quantity of land in question, when the record discloses that

under the lease under which they claim they are entitled to only one-sixth.

For the reasons aforesaid, and many others in the record apparent but not enumerated, the defendant appeals from the judgment and decree entered herein on the 16th day of December, A. D. 1895, to the United States circuit court of appeals for the eighth circuit, and respectfully requests that such appeal be allowed and that the usual citation and order be issued therein, and that said decree be by said court of appeals in all things reversed.

JAMES A. KELLOGG,
*Solicitor for Defendant, 1129 Lumber Exchange,
Minneapolis, Minnesota.*

United States Circuit Court, Eighth Circuit, District of Minnesota,
Fourth Division.

PATRICK MEEHAN and JAMES MEEHAN, Complainants, }
vs.
RAY W. JONES, Defendant. }

Notice of Motion.

GENTLEMEN: You will please take notice that on Tuesday, the 3rd day of September, the first day of the next term of said court, in said division, at the coming in of the court or as soon thereafter as counsel may be heard, I shall present a motion, a copy of which you are herewith handed, and shall read in support of said motion the proposed supplemental answer and affidavits, copies of which you are herewith handed, and all the files and records in this cause.

You will take further notice that I shall insist that said cause be heard and tried at said next term of this court commencing on the 3rd day of September next, and that you are at liberty to give notice of and take any testimony in rebuttal of the testimony already taken on behalf of the defendant in support of said supplemental answer, and that defendant will not take any other or further testimony than has already been taken in support of said supplemental answer.

Yours, etc., JAMES A. KELLOGG,
*Solicitor for Defendant, 1129-'31 Lumber Exchange,
Minneapolis, Minn.*

Dated August 3, 1895.

To C. D. & Thos. D. O'Brien and to Orville Rinehart, solicitors for complainants.

United States Circuit Court, Eighth Circuit, District of Minnesota,
Fourth Division.

PATRICK MEEHAN and JAMES MEEHAN, Complainants, }
vs.
RAY W. JONES, Defendant. }

Motion.

260 The above-named defendant, by his solicitor, James A. Kellogg, moves the court now here for leave to file his supplemental answer in said cause, averring that Mon-si-moh, or Moose Dung, Bay-sha-bah-noke, O-she-now-ah-sheak, Ne-gon-e-bin-ace, Ay-sin-e-wub-eak, and Binmway-way-bin-ace are the only heirs-at-law of the Chief Mon-si-moh, deceased, and are each entitled to a one-sixth interest in the premises in the complaint and answer in said cause mentioned and described, and the said several persons have, in pursuance of the lease made by Mon-si-moh and the approval thereof by the Government of the United States and acceptance of this defendant, been paid each their share of the rent provided for in said lease and approval, and that said several persons have made, executed, and delivered to this defendant and this defendant has likewise executed a lease of said premises wherein and whereby the lease and approval thereof by the Government of the United States is by said several parties duly accepted, ratified, and confirmed.

The grounds of this motion are:

I.

That this defendant has obtained knowledge of the interest of said several parties in said premises and the payment unto them of the rental of said premises since the making and filing of his answer in this cause.

II.

That the lease and ratification of the prior lease and approval thereof has been obtained from said parties, heirs as aforesaid, since the making and filing of the defendant's answer in this cause.

JAMES A. KELLOGG,

*Solicitor for Defendant, 1129-31 Lumber Exchange,
Minneapolis, Minn.*

United States Circuit Court, Eighth Circuit, District of Minnesota,
Fourth Division.

PATRICK MEEHAN and JAMES MEEHAN, Complainants, }
vs.
RAY W. JONES, Defendant. }

Affidavit of Ray W. Jones.

STATE OF MINNESOTA, }
County of Hennepin, } ss:

Ray W. Jones came personally before me, and, being first duly sworn, deposes and says that he is the above-named defendant, and

that he employed James A. Kellogg to negotiate a lease with Mon-si-moh, and that at that time he did not know that there were any other heirs interested in the property mentioned in said lease other than the said Mon si-moh, and that he intrusted the negotiation, procurement, and completion of said lease entirely to his said attorney, and that he had no knowledge, information, or belief that there were any other heirs than said Mon-si-moh other than which he obtained from his said attorney.

And deponent further says that he makes this affidavit in support of a motion to be allowed to file a supplemental answer in said cause setting forth the existence of said heirs and the lease executed by them to deponent.

And further deponent sayeth not.

RAY W. JONES.

261 Subscribed and sworn to before me this 3d day of July,
1895.

[SEAL.]

JAMES A. KELLOGG,
Notary Public, Hennepin Co., Minn.

United States Circuit Court, Eighth Circuit, District of Minnesota,
Fourth Division.

PATRICK MEEHAN and JAMES MEEHAN, Complainants, }
vs.
RAY W. JONES, Defendant. }

Affidavit of James A. Kellogg.

STATE OF MINNESOTA, }
County of Hennepin, } ss:

James A. Kellogg came personally before me, and, being first duly sworn, deposes and says that he is the attorney for the above-named defendant and has had charge of the procurement of the lease from Mon-si-moh to the defendant set out in the answer in this cause, and that he has also had charge of the procurement of the lease from the other persons hereinafter mentioned.

Defendant further says that when he first approached Mon-si-moh in the negotiations for the lease mentioned in the answer in this cause he inquired particularly *who*, if any, brothers or sisters he had living and the children of any of his brothers or sisters who were dead; that the person who interpreted between said Mon-si-moh and deponent informed deponent that Mon-si-moh had two sisters, but explained that what the Indians called sisters the white people called cousins; that deponent made diligent search and inquiry before the execution of said lease by said Mon-si-moh regarding the brothers and sisters of said Mon-si-moh and the children of any deceased brother or sister, but was unable to discover that any such then existed.

That afterwards deponent was informed by a letter to the Commissioner of Indian Affairs from Indian Agent Allen, of White

Earth, that Mon-si-moh had one sister, whose name deponent does not now remember; that by reason of the uncertain information regarding the heirs of the elder Mon-si-moh at deponent's suggestion that portion of the approval of the lease which provides for the payment of the rent to the U. S. Indian agent in charge of the Chipewewa Indians in Minnesota, to be by him paid to the persons who should show themselves entitled thereto, was inserted therein; that deponent did not learn of the existence of the several persons known as Bay-shab-o-noke, Oh-shen-e-wash-eak, Bim-way-way-be-nace, Negon-e-bin-ance, and Oh-sin-ne-wahbeak until informed by the transcript from the Commissioner of Indian Affairs' Office, now on file as an exhibit in this cause.

Deponent further says that immediately upon acquiring said information he procured to be obtained from said persons the approval of the lease made by Mon-si-moh and the lease now on file as an exhibit in this cause and dated July 19th, 1895.

Deponent further says that he first came into possession of said lease as executed by said several parties on the 27th day of July, A. D. 1895, and not before.

Deponent further says that he only learned of the affidavits and the decision of the department as to who the heirs of the elder Mon-si-moh were and the payment of the rent to said several parties shown and held to have been heirs of the elder Mon-si-moh on the 18th day of July, A. D. 1895, and that the transcript from the records and files of the office of the Commissioner of Indian Affairs hereinbefore mentioned and now on file as an exhibit in this cause came into the hands of deponent on the 23d day of July, A. D. 1895, and not before.

Deponent further says that he makes this affidavit for and on behalf of the defendant in support of a motion asking leave to file a supplemental answer of defendant in said cause, setting forth the facts of the existence of said heirs of said elder Mon-si-moh and the procurement of the lease from said heirs, as hereinbefore mentioned.

And further deponent sayeth not.

JAMES A. KELLOGG.

Subscribed and sworn to before me this 30th day of July, A. D. 1895.

[SEAL.]

EGBERT COWLES,
Notary Public, Hennepin Co., Minn.

United States Circuit Court, Eighth Circuit, District of Minnesota,
Fourth Division.

PATRICK MEEHAN and JAMES MEEHAN, Complainants, }
vs.
RAY W. JONES, Defendant. }

The supplemental answer of Ray W. Jones, the defendant, to the bill of complaint of Patrick Meehan and James Meehan, the complainants.

This defendant, now and at all times hereinafter, saving to himself all and all manner of benefit or of advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainty, and imperfections in said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to and for a supplemental answer, answering, saith :

I.

That since the making and filing of the complainants' amended bill of complaint in this cause and since this defendant made answer unto said amended bill this defendant is informed, which information he believes to be true, and charges the fact to be, that the Government of the United States, through its proper department and officers, has ascertained and determined that the heirs of Mon-si-moh (commonly called Moose Dung), who was a party to and named in the treaty of 1863, already particularly referred to and set forth in the answer on file in this cause, wherein and whereby there was ceded to the Government of the United States a large tract of country in Minnesota and Dakota, are Mon-si-moh, or Moose Dung, Ne-gou-e-bin-ace, Ay-sin-e-wub-eak, O-she-now-ah-sheak, Bay-mway-way-bin-ace, and Bay-sha-bah-noke, and this defendant alleges on information and belief, and charges the fact to be, that said last before named persons are the children and grandchildren and heirs-at-law of the said Mon-si-moh, deceased, and as such are each entitled to a one-sixth interest in the land and premises in the complaint in this cause mentioned and set forth and in the rent to be paid therefor.

II.

That in pursuance of the terms of said defendant's lease, referred to and set forth in his answer in this cause, made and filed and the approval thereof by the Department of the Interior of the Government of the United States as therein set forth, the authorized agent in charge of the Chippewa Indians in Minnesota, in pursuance of the orders and instructions of the said Department of the Interior, has paid to said several persons each their share of the rents so paid by this defendant for said land, and which said persons have made, executed, and delivered to said agent their receipt for said money.

III.

That on the 19th day of July, A. D. 1895, the said several heirs of the said deceased Mon-si-moh, or Moose Dung, and this defendant did make and enter into an agreement and lease in and by which it is stipulated and agreed that in consideration that this defendant perform all the terms and conditions to be by him performed in said lease and agreement and the lease and agreement made and executed on the 20th day of July, A. D. 1894, by said Mon-si-moh to this defendant and approved by the Department of the Interior of the Government of the United States of America on the 13th day of November, A. D. 1894, which terms of approval were by this defendant on the 16th day of November, A. D. 1894, duly accepted, then and in that case this defendant should have, hold, and enjoy the said premises in said lease by Mon-si-moh and approved by the Government and the last-named lease and described as follows:

Lot one (1), in section thirty-four (34), town one hundred fifty-four (154), range forty-three (43) west, in the county of Polk and State of Minnesota, for and during the full period of twenty (20) years from and after the 20th day of July, A. D. 1894, which said last-mentioned lease was, on the 29th day of July, A. D. 1895, duly recorded in the office of the register of deeds in and for the county of Polk and State of Minnesota, in Book "F" of Miscellaneous Records, on page 249; all of which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable charges in this behalf most wrongfully sustained.

RAY W. JONES.

JAMES A. KELLOGG,
Solicitor for Complainants.

STATE OF MINNESOTA, }
County of Hennepin, } ss :

Ray W. Jones came personally before me, and, being first duly sworn, deposes and says that he has heard read the foregoing answer by him subscribed and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

RAY W. JONES.

Subscribed and sworn to before me this 1st day of August, A. D. 1895.

[SEAL.]

JAMES A. KELLOGG,
Notary Public, Hennepin County, Minn.

United States Circuit Court for the District of Minnesota, Fourth
Division.

Term Minutes, September Term, A. D. 1895.

SEPTEMBER 9, 1895.

PATRICK MEEHAN and JAMES W. MEEHAN }
 vs. }
 RAY W. JONES. }

Defendant's motion for leave to file a supplementary answer in this cause having been heretofore fully argued by the solicitors for the respective parties, duly submitted, and by the court taken under advisement, now, after due consideration thereof, and being fully advised concerning the same, it is by the court—

Ordered that said motion be, and the same is hereby, denied.

United States Circuit Court, District of Minnesota, Fourth Division.

PATRICK MEEHAN and JAMES MEEHAN, Complainants, }
vs.
RAY W. JONES, Defendant. }

Order for Preliminary Injunction.

Whereas in the above-entitled cause an application for the issuance of a preliminary injunction was duly filed and set down for hearing before this court on the 8th day of January, A. D. 1895, at ten o'clock a. m., and an order to show cause having been duly issued by this court and duly served upon said defendant, as required by said order, and returnable at the time above stated, and the complainants now appearing, by their solicitor, John C. Judge, and the defendant now appearing, by his solicitor, James A. Kellogg, and both parties having been heard upon such application, and it appearing to this court that cause exists for the granting of the writ of injunction as prayed for by said complainants pending the final hearing upon the trial of this cause and the determination thereof—

It is therefore ordered that, upon the complainants giving security by bond, to be approved by this court, in the sum of five thousand dollars (\$5,000), conditioned to indemnify the defendant
265 against all loss or damage which may arise or accrue to said defendant by reason of said injunction, in the event that the same should hereafter be determined to have been improperly granted, a writ of injunction issue commanding, restraining, and enjoining the defendant, his agents, servants, employes, and attorneys, and each and every person acting at their instance or at the instance of either of them, from entering or attempting to enter unlawfully and by force and from causing or inciting any other person or persons to enter or attempt to enter upon the land and premises hereinafter described, unlawfully and by force, now occupied and possessed by said complainants, and from in any manner interfering unlawfully and by force with the possession, use, and enjoyment of

said land and premises and every part thereof by said complainants, and from in any manner molesting or attempting to molest or causing or inciting any other person or persons to molest or attempt to molest unlawfully and by force said complainants, their agents, servants, and employés, and each of them, in the possession, use, and occupation of said land and premises until the final determination of this cause upon the trial thereof and until the further order of this court, but that defendant be at liberty to prosecute any suit in court for the purposes of legally and lawfully obtaining possession of the hereinafter-described land, which he may be legally entitled to maintain.

The land and premises hereinbefore referred to are situated in the county of Polk and State of Minnesota and are described as follows, to wit: All that portion of lot one (1), in section thirty-four (34), in township one hundred and fifty-four (154), range forty-three (43) west, described as follows, to wit: A strip of land ten feet in width along the entire boundary line of and upon said lot one (1) as such boundary line is formed by the Red Lake river, being a strip of land ten (10) feet in width along and upon the bank of said Red Lake river along the water's edge of said river, and such strip of land commencing where the southwest corner of said lot one (1), in said section thirty-four (34), intersects said Red Lake river, and thence running north along the west shore of and up said Red Lake river to a point where the north line of said lot one (1), in said section thirty-four, intersects said river, and also all of the shore rights in and of said river pertaining or appurtenant to said land, and all piers, pilings, and booms in or upon said land or premises or appurtenant thereto now being used or to be used by said complainants or either of them.

Dated St. Paul, Minnesota, January 9th, A. D. 1895.

R. R. NELSON.

Judge of said Court.

266 United States Circuit Court, Eighth Circuit, District of Minnesota, Fourth Division.

PATRICK MEEHAN and JAMES MEEHAN, Com- plainants, vs. RAY W. JONES, Defendant.	}	Petition for Appeal.
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To the United States circuit court, eighth circuit, district of Minnesota, fourth division :

Your petitioner, Ray W. Jones, the above-named defendant, respectfully shows to this court that he conceives himself aggrieved by the decree entered on the 16th day of December, A. D. 1895, in the above-entitled cause, and hereby appeals from said decree to the Supreme Court of the United States.

Wherefore your petitioner prays that his appeal may be allowed, and that the transcript of the record of proceedings and papers on which the decree was made, duly authenticated, may be sent to the

said United States Supreme Court, and that the usual citation to the above complainants may be issued and the said decree may be by said United States Supreme Court reversed.

RAY W. JONES.

267 It is hereby ordered that the above appeal be allowed as prayed for.

Sept. 3, 1896.

WM. LOCHREN,

Acting Circuit Judge, District of Minnesota.

Endorsed : Filed Sept. 12, 1896. Oscar B. Hillis, clerk, by R. C. Mabey, deputy.

268 United States Circuit Court, Eighth Circuit, District of Minnesota, Fourth Division.

PATRICK MEEHAN and JAMES MEEHAN, Com-
plainants,

vs.

RAY W. JONES, Defendant.

} Bond on Appeal.

Know all men by these presents that we, Ray W. Jones and Healey C. Akeley and W. A. McLaughlin, are held and firmly bound unto Patrick Meehan and James Meehan in the full and just sum of \$1,000.00, to be paid to the said Patrick Meehan and James Meehan, their heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 1st day of September, A. D. one thousand eight hundred and ninety-six.

Whereas lately, at the September term of the United States circuit court for the district of Minnesota and the fourth division, in a suit pending in said court between Patrick Meehan and James Meehan and Ray W. Jones, defendant, in equity, there was rendered against said Ray W. Jones a decree quieting possession in certain premises in the complaint described, and the said Ray W. Jones has obtained an allowance of an appeal to the United States Supreme Court to reverse the decree in the aforesaid suit, and the citation directed to the said Patrick Meehan and James Meehan, citing and admonishing them to be and appear in the United States Supreme Court, at the city of Washington, in the District of Columbia, thirty days from and after the date of this citation :

Now, the condition of the said obligation is such that if the said Ray W. Jones shall prosecute said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

RAY W. JONES.

HEALEY C. AKELEY.

W. A. McLAUGHLIN.

[SEAL.]

[SEAL.]

[SEAL.]

Signed, sealed, and delivered in presence of—

JAMES A. KELLOGG.

WILLIAM T. COE.

STATE OF MINNESOTA, } ss:
 County of Hennepin, }

Healey C. Akeley and W. A. McLaughlin each came personally before me, and, being first duly sworn, each for himself did say that he is a resident and freeholder of the city of Minneapolis, Minnesota, in said State, and is worth the sum of one thousand dollars over and above all liabilities and set-offs and property exempt from execution.

H. C. AKELEY.
 W. A. McLAUGHLIN.

Subscribed and sworn to before me this 1st day of September, A. D. 1896.

[SEAL.]

JAMES A. KELLOGG,
 Notary Public, Hennepin County, Minn.

270 The above bond approved this 3d day of September, A. D. 1896.

WM. LOCHREN, Judge.

Endorsed: Filed Sept. 12, 1896. Oscar B. Hillis, clerk, by R. C. Mabey, deputy.

271 United States Circuit Court, Eighth Circuit, District of Minnesota, Fourth Division.

PATRICK MEEHAN and JAMES MEEHAN, Complainants, }
 vs. } Citation.
 RAY W. JONES, Defendant.

UNITED STATES OF AMERICA :

To Patrick Meehan and James Meehan, Greeting :

You are hereby cited and admonished to be and appear in the United States Supreme Court, at the city of Washington, in the District of Columbia, thirty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the office of the clerk of the United States circuit court, eighth circuit, district of Minnesota, and fourth division, wherein Ray W. Jones is the appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said Ray W. Jones, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this first day of September, A. D. 1896.

WM. LOCHREN, Judge.

272 [Endorsed:] Ent. 278. United States circuit court, district of Minnesota, fourth division. Patrick Meehan and James Meehan, compl'ts, vs. Ray W. Jones, def't. Citation on appeal to Supreme Court. Due, sufficient, and legal service of the within citation ac-

cepted this 12th day of September, A. D. 1896. C. D. & T. D. O'Brien, Orville Rinehart, solicitors for compl'ts. Filed Sept. 16, 1896. Oscar B. Hillis, clerk, by R. C. Mabey, deputy. James A. Kellogg, sol. for def't, 129 Lumber Exchange, Minneapolis, Minn.

273 UNITED STATES OF AMERICA :

Circuit Court of the United States, District of Minnesota, Fourth Division.

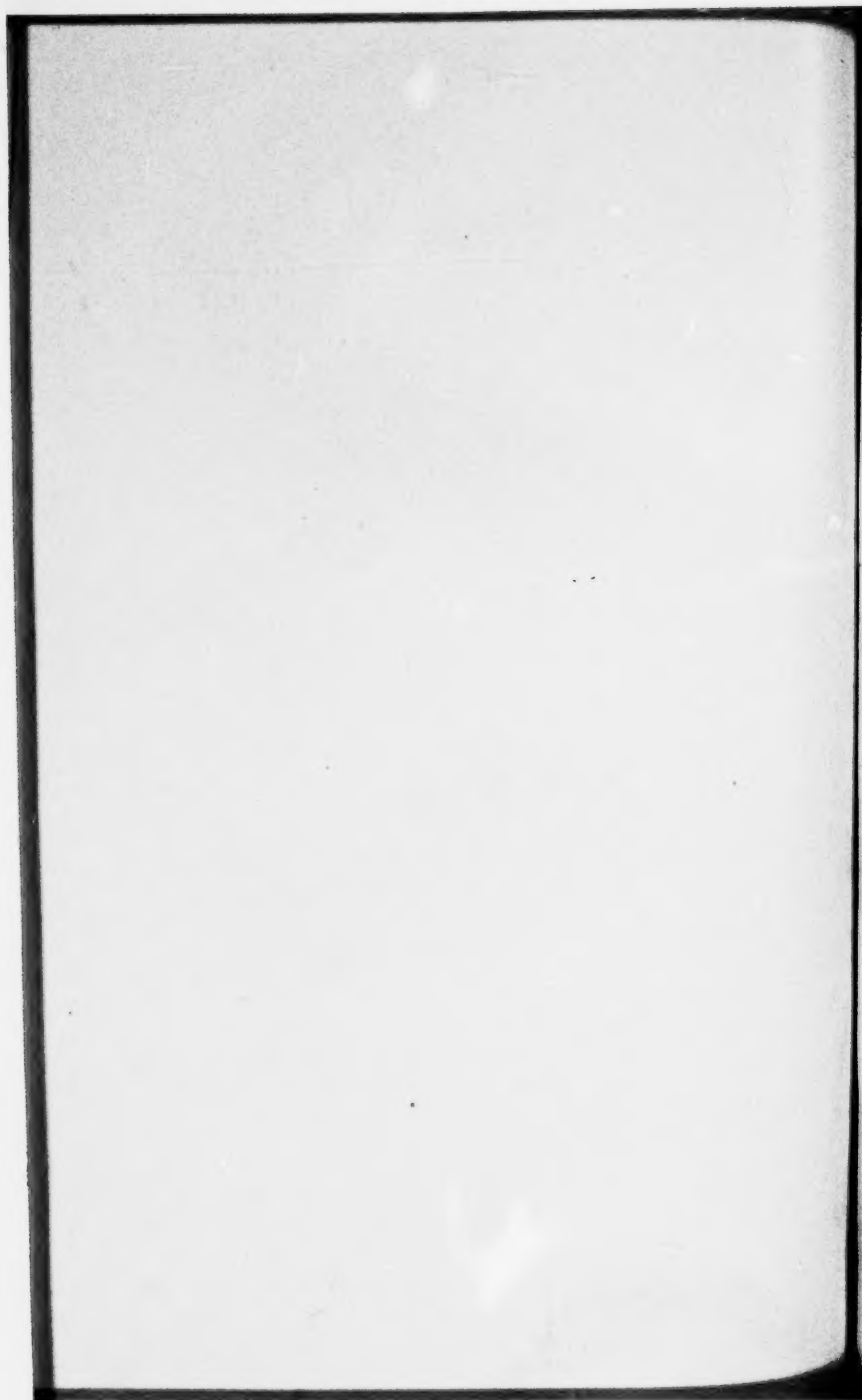
I, Oscar B. Hillis, clerk of said circuit court, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing, consisting of 275 pages, numbered consecutively from *a* to 271, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree, and all other proceedings in said cause, and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return that I have annexed to said transcript and included within said paging the original citation, together with the proof of service thereof.

In witness whereof I have hereunto set
U. S. Circuit Court Seal, my hand and affixed the seal of said court,
Dist. of Minnesota, at Minneapolis, in the district of Minne-
Fourth Division. sota, this 18th day of September, A. D. 1896.

OSCAR B. HILLIS, *Clerk*,
By R. C. MABEY, *Deputy*.

[Endorsed:] United States circuit court, district of Minnesota, fourth division. Patrick Meehan and James Meehan vs. Ray W. Jones. Return to supreme court.

Endorsed on cover: Case No. 16,387. Minnesota C. C. U. S. Term No., 237. Ray W. Jones, appellant, vs. Patrick Meehan and James Meehan. Filed September 28th, 1896.



UNITED STATES OF AMERICA.

SUPREME COURT.

RAY W. JONES,

Appellant,

vs.

PATRICK MEEHAN AND JAMES MEEHAN,

Respondents.

Brief for Appellant.

STATEMENT OF THE CASE.

Prior to the second day of October, A. D., 1863, the land in question in this cause was occupied by the Red Lake and Pembina bands of Chippewa Indians and on that day these Indians entered into a treaty with the United States through its commissioners, Alexander Ramsey and Ashley C. Morrill, wherein the Indians ceded to the United States the land therein described.

There is in this treaty, however, a reservation or exception of a portion of the land ceded, expressed as follows:

"Article IX. Upon the urgent request of the Indians, parties to this treaty, there shall be set apart from the tract hereby ceded, a reservation of (640) six hundred and forty acres near the mouth of Thief River, for the Chief "Moose Dung," and a like reservation of (640) six hundred and forty acres for the chief, "Red Bear," on the north side of Pembina River."

13 U. S. Statutes at Large, 667-671.

After this treaty the Chief "Moose Dung" made selection of the land desired by him and made it a stopping place when not with his band, roaming, hunting and fishing; but before it was surveyed into the usual legal subdivision, this old Chief Moose

Dung died, and at the time of the platting into legal subdivisions in 1879, the present Chief Moose Dung notified the agent in charge of the Chippewa Indians, of the claim and selection made.

The history of this transaction and final designation is very fully and completely set forth in the record in the documents found on pages 118-119-120-121-221-224-225, the substance of which is that there is set apart for the heirs of Chief Moose Dung six hundred and forty (640) acres of land in accordance with Article IX of the treaty, of which the land in question in this cause is a part, and is withheld from entry, and designated on all Government maps as "Moose Dung's reservation." The present Chief Moose Dung occupied the tract in substantially the same manner the elder chief had done, living there a portion of the time when not roaming, hunting and fishing on the reservation with his band; but neither of whom ever cultivated any portion of it, except a garden, such as is usually done by Indians wherever they take up their abode. (R. 67 and 73.)

On the seventh day of November, 1891, the appellees procured the signature of the present Chief to the document, Exhibits A, B, C, found on page 112 of the record, which is the lease decreed to a be valid and subsisting lease by the court below and which is the subject of this appeal, and on the 10th day of November, 1891, filed the same for record in the office of the Register of Deeds for the county of Polk, Minnesota, being the political division of Minnesota in which the land lies.

But the appellees never joined in this lease and never took possession of the premises therein described until the 13th day of December, 1894. (R. 46 and 86.)

239 On the 20th day of July, 1894, the appellant procured the signature of the present chief to the instrument found on page 226 of the record, and on the 24th day of July, 1894, executed the same on his part, and on the 4th day of August, 1894, there was passed by the Congress of the United States and approved by the President thereof, a resolution, defendant's exhibit 5, found on page 228, wherein the Secretary of the Interior is "authorized to approve if, in his discretion, he deems the same proper and advisable, and upon such terms and limitations as he may impose" this lease, and afterwards and in the 13th day of November, 1894, the Acting Secretary of the Interior approved this lease by endorsing thereon the language found in the

record on page ²⁴⁰227, and set forth his reasons in a letter to the Commissioner of Indian Affairs under date of November 13th, 1895, found on page ²⁴⁹249 of the record, *et seq.*, and this approval by the Acting Secretary is approved by the Secretary of the Interior in a letter to the Chief of the Indian Division, found on page ²²⁸228 of the record, dated December 27th, 1894, in which he says: "Pending an investigation of the character of title held by Chief Monsimoh, as well as his relations to the Chippe-wa tribes, I directed that the execution of the letter prepared by the First Assistant Secretary be suspended.

After a full investigation I am satisfied that the Department has authority to approve a lease of the property made by Monsimoh, and you will forward at once the letter."

On the 10th day of August, 1894, thirty days after the date of the appellant's lease, the appellees procured from the Indian Monsimoh a lease of the same premises and sought to have the same approved by the Secretary of the Interior, but this lease, with the lease in question, was before the department and was disapproved by the letter of Acting Secretary Sims, (defendant's exhibit C. in record, page ²⁴⁹249,) to the Commissioner of Indian Affairs.

After the approval of the lease by the Acting Secretary of the Interior and on the 16th day of November, 1894, the appellant, Ray W. Jones, accepted in writing, endorsed on the lease, the terms and conditions of the approval thereof, and on the 15th day of December, 1894, the Chief in writing accepted and agreed to the same (R. ²²⁷227.)

After the approval of the lease, as hereinbefore set forth, and on the 5th day of December, 1894, appellant went upon the land and made measurements and stuck iron stakes in the ground to indicate the location of a saw-mill to be built thereon, at which time there was on said land nothing in the form of improvements whatever (R. ¹²⁴124, Q. 1, *et seq.*), but soon afterwards appellees entered and built a temporary house, resting on the land and supported by piles in the water at the point indicated by the stakes driven by appellant as the place where there would be taken from the river into the mill the logs to be sawed into lumber, and set posts and attached ^{46, 84 and 151.}barbed wire thereto, along the line of the river bank. (46, 84 and 151.)

The elder chief was, and the present chief is, the chief of a band of Indians, and maintains his ^{159, 166 and 147.}tribal relations and is an annuitant of the government (R. 159, 166 and 147.)

Upon payment of the rent by appellant to the agent in charge of the Chippewa Indians in Minnesota, as provided in the terms of approval, the Commissioner of Indian Affairs directed the agent to ascertain the heirs of the elder Chief who were entitled to share in the rent (R. 232, *et seq.*) whereupon it was determined by the Department of the Interior that the heirs of the elder Chief were entitled to share in the rent (R. 238), and the rent money was accordingly distributed among those persons (R. 135 and 159) who were the heirs of the elder Chief (R. 164 to 177). After the Department had so determined the heirs of the elder Chief, appellant procured from them the lease, defendant's exhibit 17, found on page 239 of the record, and asked the court to grant him leave to file a supplemental answer, setting forth these facts, which motion, with the affidavits and the proposed supplemental answer, are found in the record, commencing on page 259 and following, which application was denied in the order found on page 264 of the record.

The appellant procured the lease of this land for the purpose of locating and operating thereon a saw mill and enterprises appurtenant thereto, and for that purpose had organized a corporation with a capital stock of \$100,000 (R. 126 and articles 223, 225).

The appellees have a mill below on the river and seek to control this point for the purpose of keeping appellant from locating a mill there, but it would not even inconvenience the appellees. (See R. 123, and 198 to 210.)

Upon these facts the appellant claims:

First. That prior to the cession by the Indians to the Government the Indian title was the right of occupancy in perpetuity with the power to part with that right to the Government only.

Second. That by the treaty they ceded their lands except the reservation on which they now live and the Moose Dung reservation as a home for the old Chief.

Third. That by the construction put upon this reservation in the treaty by the Government, the heirs of the older Chief have the same right of occupancy in perpetuity that the tribe have of their reservation and upon the same limitations.

Fourth. That no title can be acquired from the Indians except by the consent of the Government.

Fifth: That these heirs of the elder Chief being tribal Indi-

ans their contracts are invalid until approved by the Government.

Sixth. That appellees' lease, not having been approved by the Government, is invalid, and appellant's lease, approved by the Government, is prior and superior to the appellees' lease.

Seventh. That appellant has all the rights in the land, both of Indians and the Government.

Eighth. That appellees' lease is unilateral and they had never taken possession of the lands described therein.

Ninth. That appellees' lease was procured by deception and unfair dealing and over-reaching, and is not the contract of the present Chief.

Tenth. That at the time of the taking of appellant's lease, appellees' knew of it and were present and could have given appellant notice, but did not, and are thereby estopped from now claiming under their lease.

Eleventh. That appellees subsequently secured a lease and sought the approval thereof by the Government and thereby conceded this lease, under which they now claim, to be void and are now estopped to deny the authority of the Government over the land and the Indian.

Twelfth: That the construction put upon the treaty by the Government, is binding upon the court.

Thirteenth: That the Department of the Interior has decided that the title held by the heirs of the elder Chief is that of occupancy only in perpetuity, and is binding upon the appellees and the court.

Fourteenth: That the Department of the Interior has decided that the heirs of the elder Chief are tribal Indians and under the guardianship of the Government, and their contracts are invalid unless approved by the Government, and that is the law of this case and binding on the complainants and this court.

Fifteenth: That appellees only motive in holding their lease is to prevent an enterprise in competition with their own.

Sixteenth: That under appellee's claim of the law of the case they have a lease of only one sixth of the land described in their lease and appellant has a valid lease to five-sixths of that portion described in this lease.

Eighteenth: That appellees claim that the land in question is necessary to enable them to carry on their business, is not supported by the evidence.

Nineteenth: Defendant is seeking the location for the purpose of erecting and carrying on a saw mill.

Twentieth: The description in appellee's lease is uncertain and for that reason void.

And for these reasons the decree of the court below is erroneous and should be set aside. And the lease of the appellant, held to be a valid and subsisting demise of the land superior to that of appellees.

ASSIGNMENTS OF ERROR.

The appellant insists on each and every assignment of error alleged in the record at page 258 and 259.

ARGUMENT.

It is conceived that these several propositions may be conveniently discussed under four general heads.

I.

The character of the title held by the elder Chief and now held by his heirs under the treaty of 1863.

II.

The status of the elder Chief and his heirs.

III.

The authority of the Government to control the contract of these heirs affecting the land in question.

IV.

The equities of this case.

I.

THE CHARACTER OF THE TITLE HELD BY THE ELDER CHIEF AND NOW HELD BY HIS HEIRS UNDER THE TREATY OF 1863.

"At the time of the discovery and settlement of America, the many Indian tribes inhabiting that portion now embraced within the limits of the United States were recognized by the various Governments under whose authority the settlements by the whites were made, and by each other, as separate, distinct and

independent political communities capable of maintaining the relations of peace and war under the laws and customs of nations. The several Governments under whose authority and by whose subjects this country was discovered and settled, became entitled to the right to pre-empt the land from the natives as against each other and all other European powers.

Of necessity, each Government was exclusively entitled to the right to extinguish the Indian title to the country claimed and occupied by it, and this right of course abridged the right of the Indian to the extent, that he could only dispose of his title in the land occupied by him to that Government which claimed and had the right of pre-emption, and in which the absolute ultimate title or the fee rested."

Commissioner of Indian Affairs Report, 1891, Volume 1, page 9.

"The European nations which respectively established colonies in America, assumed the ultimate dominion to be in themselves, and claimed the exclusive right to grant a title to the soil subject only to the Indian right of occupancy. The natives were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it and to use it according to their discretion, though not to dispose of the soil at their own will, except to the government claiming the right of pre-emption."

3, Kent's Commentaries, 379, et. seq.

It is the law of the land, and no court of justice can permit the right to be disturbed by speculative reasonings or abstract rights. *Ibid.*

The title of the Indians in the land they occupy is the right of possession in perpetuity, and the Government of the United States has the sole right to acquire from them this right.

Cherokee Nation vs. State of Georgia, 5 Peters, 1.

Worcester vs. State of Georgia, 6 Peters, 515.

Graham vs. McIntosh, 8 Wheaton, 542.

Mitchell vs. United States, 9 Peters, 711.

The Indian right is that of occupancy; and until this right shall be extinguished by purchase, no possession adverse to it can be taken. It is also admitted that a mere reservation of the Indian right to a certain part, within described boundaries leaves the right reserved, as it stood before the cession.

Godfrey vs. Beardsley, 2 McLean, 412.

Wheeler vs. Mc-shin-go-me-sia, 30 Ind., 402.

Prior to the treaty of 1863, October 2, the Red Lake and Pembina bands of Chippewa Indians were in the occupancy of and owned the perpetual right to occupy certain lands on both sides of Thief River in Minnesota. By the terms of that treaty the Indians ceded to the United States all of their lands west of Thief River, and some of their lands on the east side of said river. The lands which they reserved for themselves are on the east side of the river. The lands reserved to the elder Chief Mon-si-moh are on the west side of Thief River, opposite to what is known as the present Red Lake Indian Reservation. It is very evident that the object of Article IX. of this treaty was to reserve to Chief Mon-si-moh this land.

There is no language in the treaty which indicates that this Chief was to receive any other title to these lands than that held by the band of Indians to which he belonged in their present reservation. He was at that time one of the chiefs of his tribe, and remained so until the time of his death.

By this treaty the Indians ceded to the United States their lands, except the reservation on which they now live, and the 640 acres reserved to Mon-si-moh and a like quantity to Red Bear.

Making a reservation as this was made by the 9th Article of the treaty, is in effect excepting it from the operation of the treaty, and leaves it in the situation that their present reservation occupies, viz: not affected by the treaty.

There is nothing in the treaty to indicate that it was the intention of the United States or the Indians that a fee simple should pass to Mon-si-moh.

The circumstances surrounding the parties at the date of the treaty, the object for making it, the location of the home of this Indian Chief, all go to show that the intention was merely to make a reservation in his behalf individually, the same as that made for his tribe on the east side of Thief River, and these facts and circumstances all contradict the idea that it was the intention of the treaty to confer upon this Chief a fee simple title in these lands, for he was at that time a Chief and remained so during his life, and it was not intended that he should separate himself from his tribe or lose any of his tribal authority or any right or interest in the tribal lands or other property.

There are neither words of grant or estoppel in this Article IX.

In construing treaties the courts have adopted the general rules, which are applied in the construction of statutes, contracts and written instruments generally.

U. S. vs. Payne, 8 Fed., 883-892.

Amiable Isabella, 6 Wheaton, 1.

U. S. vs. Percheman, 7 Peters, 51-83.

Steamship Co. vs. Hedden, 43 Fed., 20.

U. S. vs. D'Aulerville, 10 How., 609.

Strother vs. Lucas, 12 Peters, 410-438.

The construction of the treaty to be taken as the true one, is the one which has been adopted and acted upon by all parties to it.

U. S. vs. Payne, 8 Fed. Rep., 892.

And it is clearly and well settled that in the construction of a written contract the intention and meaning of the parties must be ascertained from the terms of the writing, the nature of the transaction and the surrounding circumstances, and they cannot be allowed to testify as to their understanding and intention.

Kyle vs. Bellinger, 79 Ala., 516.

No testimony of the parties to this treaty as to what they intended, or their construction of this treaty, can in any view be competent. To admit the competency of such evidence would be to lay down a rule that every solemn treaty upon the Statute Books could be wrested to the individual sentiments, desires and influences of those seeking advantages under it. Such a rule once adopted would destroy not only the integrity of the instrument itself, but the safety of all proceedings taken under it looking to the acquirement of rights and privileges.

There is no claim of fraud in the negotiations of this treaty. There can be no claim of obscurity or ambiguity in its language. The language of Article IX is plain, clear and explicit and not to be changed by the understanding of individuals first testified to, at the expiration of more than thirty years after its solemn conclusion. No rule of evidence applicable to obscure or ambiguous instruments by which parol evidence is admissible can be invoked in this case.

The circumstances surrounding the conclusion of this treaty point unmistakably to the fact that simply a reservation, in other words, a title such as is held by Indians generally in a reservation, was intended to be created by Article IX of the

treaty. The transaction was a grant to the general Government, with a reservation to one of its grantors. At the date of the conclusion of the treaty the Indian Mon-si-moh was a tribal Indian. He was the Chief of a band of roving tribal Indians, dependent for subsistence upon hunting and fishing in the wild and unsettled portions of this country.

Assuming for the purposes of the argument that any of the testimony of the declarations of Mon-si-moh made at the date of the conclusion of the treaty are admissible, it is apparent that it was not for the purpose of pecuniary emolument but simply the object of having an exclusive country on which to camp and over which he might exercise absolute control as Chief of his band of Indians, was the moving influence with Mon-si-moh in asking for and accepting land instead of monetary consideration for his services in effecting the treaty. That the value of the land as a commercial commodity in no degree entered into his purpose in asking for it, is evidenced by his declaration that he did not want money; that money would be quickly lost or that he would be deprived of it by the superior intelligence of the white man with whom he came in contact, and that his sole purpose was to acquire for himself and his children a place where he might feel that his authority was absolute and supreme and that no interference by others might be anticipated.

The testimony of Alexander Ramsey, one of the Commissioners who negotiated the treaty on the part of the general Government, is that he understood that the land which was set apart to Moose Dung and Red Bear was a reservation. The report of the Commissioners uses the identical language in referring to the reservation for the tribe, that is used in Article IX of the treaty in referring to the Moose Dung reservation; for the Commissioners say in their report, in speaking of the reservation, that it had been set aside for the tribe under the treaty, that some fault had been found by the Indians with "the reservation set apart for them" (see report of Commissioners).

The journal of Mr. Wheelock, who was the secretary of the commission, says that wherever reference was made to this land, either by Moose Dung or anyone else, it was always spoken of as a reservation and treated on that basis.

The treaty itself furnishes the most conclusive internal evidence that only a reservation was intended to be created by Arti-

cle IX in favor of Mon-si-moh. Article VIII of the treaty specifically provides for grants in fee to any individual members of tribes represented in the treaty stipulation. If it had been contemplated that the reservation to Mon-si-moh was to be a grant in fee, it certainly is reasonable that the provisions relative to it should have been contained in Article VIII, and expressed in similar language to that used in such article. The basis for the grants in fee provided for in Article VIII, is the basis which has ever been the policy of the Government to pursue in granting to Indians the fee in lands carved out of the public domain, to-wit: The adoption by the Indians of civilized habits, the laws, the customs and the manners of the whites, and the elevation to citizenship. Every statute of allotment, every provision for grants in fee contained in the various statutes enacted by Congress, all render the adoption of such habits, customs and laws as the preliminary requisite of title in fee to lands so allotted and granted.

See Indian Allotment Statutes:

Elk vs. Wilkins, 112 U. S., 94

State vs. Fraser, 44 N. W., 471.

Whenever the Government has sought to vest title in fee in lands reserved for particular persons in Indian treaties, it has used the word "grant," "fee," or similar expressions, or made, as has been suggested, the adoption by the beneficiary of the habits of civilized life, the prerequisite to the donation of such title.

Doe vs. Beardsley, 2 McLean, 412.

Smythe vs. Henry, 41 Fed., 705.

And the Government has always with the strictest care made provision, where such grants have been made in fee and absolute title vested, that no alienation of such title should be made by the Indian without the approval of the general Government. The superior intelligence of the white man, when influenced by cupidity, has been the object which the federal Government has ever sought to guard the Indians against; and it is but fair to say that had the Government any intention of vesting an absolute title in the reservation specified in Article IX in the Indian Mon-si-Moh, it would at least have suggested in that Article or in some other provision of the treaty, a similar provision looking to the preservation and protection of the Indian's rights.

No better illustration of the wisdom of the policy pursued by the general Government can be found than in the facts of this

case. The lease under which complainants claim, provides for a yearly rental of twenty-five dollars ; while in the case of the Jones Lease, the government after the fullest investigation determined that four hundred dollars per annum was an equitable consideration for the use of the premises in question. The necessity of the exercise by the general Government of the general supervision over tribal Indians which it has always exercised and claimed, finds emphasis in the fact of the execution and procurement of the lease of the respective parties to this action.

For treaties containing such stipulation and evidencing the policy of the federal Government see:

Treaties 1816 and 19 Cherokee Indians.

Treaty October 1st, 1859, Sac and Fox Tribes, (15 U. S. S., 467.)

Treaty June 24, 1862, Ottawa Indians (12 U. S. S., 1238.)

Act of Legislature, N. C., January 2nd, 1847.

Treaty Oct. 6, 1818, Miami Indians.

Treaty Oct. 23, 1826, Miami Indians.

Treaty Oct. 24, 1834, Miami Indians.

Treaty Nov. 6, 1838, Miami Indians.

Treaty Nov. 28, 1840, Miami Indians.

Treaty June 5, 1854, Miami Indians.

Treaty July 29, 1829, Ottawa, Chippewa and Potawatamie Indians.

Treaty June 3, 1825, Kansas Indians.

Treaty January 31, 1855, Wyandot Indians.

Treaty March 7, 1842, Wyandot Indians.

Treaty November 15, 1861, Potawatamie Indians.

Treaty March 24, 1862, Creek Indians.

Treaty July 28, 1862, Chippewa Indians (12 U. S. S., 1239.)

Treaty Nov. 15, 1861, Potawatamie Indians.

Treaty Chippewa and Christian Indians, 12 U. S. S., 1105.

And ample provisions have been made for the subsequent issuance of patents by the general government.

(3.) It is equally well settled that the manner in which the parties to a contract have treated it since its execution and the methods pursued under it will be considered and parole evidence upon this point is admissible.

By the undisputed evidence in this case both the dead and

living Chief Mon-si-moh were and are tribal Indians. By the undisputed evidence in this case it is clear that no acts were done of improvement in the line of farming, of cultivation or in any other manner as evidencing absolute proprietorship or any understanding that the land in question was to be devoted to any other purpose than that peculiar to an Indian reservation.

The fact that Mon-si-moh at one time and while his wife was living, cultivated a garden spot upon this reservation, is no more evidence of civilization or the adoption of civilized habits, than is the fact that every squaw cultivates for every male Indian a garden spot upon every reservation in North America, and has done so by the customs and habits of her tribe from time immemorial.

The living chief has always treated the land in question simply as a reservation. The general government has in like manner always treated it. Every item of evidence in the case wherever it is apparent that the subject of this land has come under the special action of the general government discloses that the government has so regarded and treated this reservation. The official map of the general government in evidence has so defined it, and in all laws, correspondence and official acts of the Interior Department evidenced by the Joint Resolution, the approval and promulgation of the Jones Lease, the opinions of the Acting Secretary and the Secretary of the Interior, it has been solely so recognized and treated.

The fact is of the utmost importance in determining the proper construction of Article IX of this treaty.

Coleman vs. Grubb, 23 Pa. St., 393, 409.

Gas Light Co. vs. City of St. Louis, 46 Mo., 121.

Jackson vs. Perrine, 35 N. J. Law, 137.

Stone vs. Clark, 1 Met., 378.

Trustees vs. Ry. Co., 3 McCrary, 455.

Foster vs. Goldschmit, 21 Fed., 70.

And it is equally well settled that where a certain construction and interpretation of treaties has been adopted by the Executive Department that that construction will be followed by the Judicial Department when it is not repugnant to the language or the purpose of the treaty.

Castro vs. De Uriarte, 16 Fed., 93.

Lattimer vs. Poteet, 14 Pet. 15.

U. S. vs. Holliday, 70 U. S., 407.

(4.) The language of Article IX is "there shall be set apart a reservation out of the land ceded." So long as this reservation was to a tribal Indian Chief of a roving band with no hope upon the part of the government expressed of the adoption by him of civilized habits and certainly no expression on his part of any intention so to do, it is clear that no higher title could pass by such language than is ordinarily incidental to reservations to any Indian or Indian tribe; and in establishing reservations, although the government has often used words of perpetuity and heirship, such as would seem to vest in the beneficiaries absolute title, yet such language has always been understood and treated as conveying no more than the right of occupancy and possession with the ultimate title retained in the general government.

Beecher vs. Wetherby, 95 U. S., 517.

U. S. vs. Cook, 19 Wallace, 591.

Ry. Co. vs. U. S., 92 U. S., 733.

The character of the Indian title was long since settled in this country by the supreme court of this United States. That title is simply the right of occupancy and possession. The absolute and ultimate title rests in the sovereign power of the nation, the federal government. In this case an Indian tribe is ceding to the general government whatever title it may have in certain lands. It asks that from the lands so ceded a section may be reserved for one of its members; and the government to whom the cession is being made, accedes to this request. The force of these acts is clearly to retain for the reservee whatever title the grantors possess, no more, no less.

Wheeler vs. Me-shing-go-me-sia, 30 Ind., 402-6.

Godfrey vs. Beardsley, 2 McLean, 412.

It is simply an authorization to hold in severalty. Such a grant cannot separate the Indian from his nation, nor give to him a title which could be judicially distinct from that of his tribe, as it might still be acquired from or ceded by such tribe.

Johnson vs. McIntosh, 8 Wheat., 542.

It is apparent that the construction put upon Article IX of the treaty is as has been hereinbefore stated, the right of possession only in Mon-si-moh and his heirs, with the ultimate fee in the Government, together with the exclusive right to acquire the right of possession from the Indians.

This position has received congressional sanction in Joint

Resolution, approved August 4th, 1894. (Defendant's Exhibit, page 339.) 242 (Defendants Ex. 5.)

The government is not a party to this proceeding and cannot be bound by the decree. Neither is Mon-si-moh or the other heirs.

This view of the case comports with the request of the Moose Dung at the treaty, viz: A place where he and his children might live forever, a reservation for them. While a strict construction of the language used would limit it to the life of the elder Chief, yet the government has carried out the old Chief's request literally, and allowed his children the same right as himself.

In conclusion therefore, we say the title held by the elder Chief and now held by his heirs, is the right of possession in perpetuity.

So long as any heir of the elder Chief exists and the ultimate fee is in the government, and that no right can be acquired in this land without the consent of the government.

Hence the complainant's lease is invalid and void and defendant's lease is prior and superior to that of the complainants.

II.

THE STATUS OF THE ELDER CHIEF AND HIS HEIRS.

"As the settlement of the country advanced, and as the demands of an increasing population required, the United States adopted the policy of extinguishing as far as possible, the title of the various tribes to the territory in which each respectively claimed a right, and of devoting to each tribe a separate, distinct district or reservation of land, of smaller area, within whose limits it was protected in the enjoyment of a modified or local sovereignty.

Their subjugation and absorption as a mass was not attempted. The tribes continued independent, and individual members were not, in the proper sense, citizens of the United States. While they were subject to the laws of a state when mingling in its population, they were regarded, when living on their own reservations, as subject under certain limitations to their own distinctive jurisprudence, civil and criminal.

While the Indians and the Americans were in theory living under the same dominion, they were in fact, members of different political societies, owing allegiance, primarily, to different

governments. The Americans belonged to one political community, and the Indians to many. But as the whites increased in number and power, and in time enclosed by their settlements the reservations that had been set apart by treaties for the use of the different tribes, and were only prevented from entering and making settlement thereon by an enforcement of those treaties by the government, the Indians became entitled to and relied upon its protection, while owing no allegiance thereto. Thus it was that the relation of domestic dependent nations, now held by Indian tribes within the United States to this government arose, and this relation, which has been said to "resemble that of guardian and ward," embraces every tribe within our jurisdiction."

*Commissioner of Indian Affairs report, 1891, Vol. 1,
Page 2.*

The foregoing states very clearly the understanding of the Department of the United States government charged with the immediate care of the Indians.

The guardianship is not limited to the tribes, but to the individual Indians holding tribal relations. By section 8 of article 1 of the Constitution, Congress is given the power to regulate commerce with the Indian tribes. Revised Statutes 1878, page 19.

By section 463, same statutes 78, it is enacted that "the Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs, and of all matters arising out of Indian relations."

By section 2149 the Commissioner is authorized to and required to remove from any tribal reservation any person being therein without authority of law.

Section 2103 requires the approval of the Secretary of the Interior and Commissioner of Indian Affairs to all contracts with Indian tribes or individual Indians such as therein named.

It is true that the particular contract under consideration in this case, does not fall within those specified in this section, and hence the necessity of the Joint Resolution, Exhibit 5. Evidently the Department of the Interior put the Moose Dung grant in the same category with allotted lands and it certainly comes within that category, leases of which are required to be approved by the Department. That is, it is land occupied in

severalty, but the title is held by the Government in trust, hence it comes within the purview of Section 463.

The title to this land and the right of the Indians to make a lease thereof, were raised and passed upon by both the Acting and Secretary of the Interior. Exhibits 6 and 7, Record 249, 268, and 228. 240.

The heirs of the elder Chief are tribal Indians, not citizens of the United States. The laws of Minnesota regulating conveyances can have no force upon lands within the limits of an Indian reservation, nor upon an instrument executed by a tribal Indian not a citizen relative thereto, nor of the registration thereof. No state laws have any force over Indians living upon a reservation and in tribal relations. The constitutional authority vested in Congress to regulate commerce with the Indian tribes—not only authorizes the federal government to legislate, but is an absolute inhibition for the States to legislate. There can be no divided authority in this matter.

The control of Congress over the interest of tribal Indians is exclusive of all state control. To regulate commerce with the tribal Indians is to regulate commerce (intercourse) with the individual Indians of the tribes.

2 *Storrey Constitution* (4th Ed.) Sec. 1097 et seq. and 1933.

Miller on Constitution 469, 401.

U. S. vs. Holliday, 70 U. S., 407.

U. S. vs. Kagama, 118 U. S., 375.

New York Indians, 72 U. S., 761.

Kansas Indians, 72 U. S., 737.

Doyle vs. Irish, 2 Barb., 639.

U. S. vs. Shanks, 15 Minn., 302.

Hastings vs. Farmer, 4 N. Y., 293.

Cherokee Nation vs. Ga., 5 Peters, 1.

Worcester vs. Ga., 6 Peters, 515.

Wall vs. Williamson, 8 Ala., 48.

Wall vs. Williams, 11 Ala., 826.

Morgan vs. McGhee, 5 Humph., 13.

Boyer vs. Divily, 58 Mo., 510.

Tuton vs. Byrd, 1 Swan., 108.

Jones vs. Laney, 2 Texas, 342.

U. S. vs. Payne, 4 Dill., 389.

State vs. Campbell, 53 Minn., 354.

Foster vs. Commissioners, 7 Minn., 89.

Earle vs. Godley, 43 Minn., 361.

U. S. vs. Thomas, 151, U. S., 577.

The basis of this control is that such Indians are wards of the federal government and touching them and their concerns, the federal government, through Congress, has the exclusive power of legislation and control. The Joint Resolution of Congress authorizing the approval of the Jones Lease, in this case supplies the basis of authority for the action of the Department relative thereto, and at least by implication, forbids any other lease.

Smith vs. Stevens, 77 U. S., 321.

And the fact that the heirs of Mon-si-moh hold this reservation within the limits of the State of Minnesota, in no way gives to them the character of citizenship.

Blair vs. Pathfinder, 2 Yerger, 407.

U. S. vs. Holliday, *supra*.

U. S. vs. Shanks, *supra*.

Jackson vs. Reynolds, 14 Johns, 335.

Jackson vs. Goddell, 20 Johns, 183.

U. S. vs. Osborne, 6 Sawyer, 406.

Ex parte Reynolds, 5 Dill., 394.

The office of guardian of the Indian tribes and individuals has been exercised by the government for over one hundred years and by the Colonial Governments prior to the organization of the Government of the United States. This, then, has become the settled law of the land and cannot now be disregarded by the courts.

But it will doubtless be claimed by the appellees that this rule was changed by Sec. 6, Chap. 119, 24 Statute, page 388, Act 1887.

But this act has recently received judicial interpretation by the Circuit Court of Appeals of the eighth circuit and of the ninth circuit in

Bells vs. Ross, 64 Fed. 417, and

Beck vs. Flourney, 65 Fed., 30.

There is nothing in the circumstances surrounding the reservee in this treaty, or his heirs, to make this any exception.

They are tribal Indians living on the general reservation of their tribe and receiving annuities from the government and in no manner whatever complying with the terms of this statute.

The government, recognizing its paternal care to support and maintain them, should be granted the right to control their contracts and approve or disapprove them as it has done in this case.

III.

THE AUTHORITY OF THE GOVERNMENT TO CONTROL THE CONTRACT OF THESE HEIRS AFFECTING THE LAND IN QUESTION.

If we are correct in our position that the land in question is a reservation and that these heirs are tribal Indians, it follows that the Government has the power to control their contract made with reference thereto.

It equally follows that the Government has this power, if either of the conditions claimed exists.

There is no conflict of testimony that none of them live upon the land or that they are tribal Indians.

They are each uneducated, roving Indians, living on the general reservation and Government annuitants and belong to a tribe. They each come clearly within the class named in Sec. 2103 of the Revised Statutes, whose contracts are void unless approved by the Government. Can it be that the Government intended that Indians of their character should be allowed to contract regarding their land, and so generally provide for the control of all other Indian contracts?

Certainly not. On the contrary the presumption is that it was intended to leave their contracts to the control of the Interior Department, under the general authority of section 463, Revised Statutes. The Government of the United States is the guardian of the Indian, and any contract entered into by him without the approval of the Government is nugatory and void. As was said in

Cherokee Nation vs. State of Ga., 5 Peters, 1.

"Their relation to the United States resembles that of a ward to his guardian. They look to our Government for protection, rely upon its kindness and its power, appeal to it for relief from their wants, and address the President as their "Great Father."

"As long as they retain their tribal relations they are domestic, dependent communities."

State vs. Campbell, 53 Minn., 355.

Worcester vs. State of Ga., 6 Peters, 515.

"It seems to us that this is within the competency of Congress. These Indian tribes are the wards of the Nation. They are communities dependent on the United States. Dependent, largely, for their daily food, dependent for their political rights.

They owe no allegiance to the States, and receive from them no protection. Because of local ill-feeling, the people of the States where they are found are often their deadliest enemies.

From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them, and the treaties in which it has been promised, there arises the duty of protection and with it the power. This has always been recognized by the Executive, by Congress and this court, whenever this question has arisen."

U. S. vs. Kagama, 118 U. S., 375-383.

Choctaw Nation vs. U. S., 119 U. S., 1-27.

Cherokee Indians vs. U. S., 117 U. S., 288.

These Indians maintain their tribal relations, and one is an acting Chief, and lives among his people, and Congress by the Joint Resolution,

2 Sess., 1894, Private Acts, 40.

and the Department of the Interior, by its action, have assumed and exercised this power of guardianship in this particular instance.

What stronger argument can be offered for the doctrine laid down in the cases cited, than the facts of this case.

If the Federal Government has power to protect a tribe of Indians, why has it not the right to protect an individual Indian in his rights.

If the contracts of the several tribes are subject to the approval of the Government, why are not the contracts of the individual Indians?

Is there not greater reason for exercising this guardian care over the individual, than over the tribe?

Most certainly it is, and the right to do so is clearly within the authority cited.

We have singled out these last authorities as most clearly presenting the views of the court upon this question.

The general polity of the Government regarding leasing of lands held by Indians in severalty has been manifested in the act of February 28, 1891, 26 Stats. 794, Sec. 3; and in Proviso in Chap. 290, 2 Sess., 1894, page 305, as follows: "That whenever it shall be made to appear to the Secretary of the Interior that by reason of age, disability or inability, allotment of Indian lands, under this or former acts of congress, cannot personally and with benefit to himself, occupy or improve his allotment

or any part thereof; the same may be leased upon such terms, regulations and conditions as shall be prescribed by the Secretary for a term not exceeding five years for farming or grazing purposes, or ten years for mining or business purposes."

The Joint Resolution, Exhibit "5",

2 Sess., 1894, Private Acts, page 40, Res. 41.

supplies the place of these acts, as the defendant's lease is for a period longer than that provided for in these acts.

An examination of the several statutes known as the non-intercourse acts will indicate the general policy of the Government regarding the control of tribal Indians, viz:

Sec. 2110, Revised Statutes 369.

Sec. 5, page 246, Supplement to Revised Statutes.

Chap. 135, page 16, Supplement to Revised Statutes.

Secs. 14, 15, 16, page 167, Supplement to Revised Statutes.

Chapters 3 and 4, Revised Statutes, page 369 and 371.

"In November, 1779, when congress were discussing the conditions of peace to be allowed to the six nations, they resolved that one condition should be, that no land should be sold or ceded by any of the said Indians either as individuals, or as a nation, unless by consent of Congress."

Chancellor Kent in Goodsell vs. Jackson, 20 John, 723.

These acts of Congress all show the general policy of the Government to inhibit all dealings with the Indians, except under the supervision of the Government, and clearly by Sec. 2119 the Government has power to protect in case of land set apart in severalty.

By article 3 of the ordinance, for the Government of the territory northwest of the Ohio, Revised statutes of the U. S., 15, it is enacted regarding the Indians, "that laws founded in justice and humanity shall, from time to time, be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

Article 2, of the treaty with the Chippewa and other Indians, of Jan. 21st, 1785, 7 U. S. Statutes at Large, 16, reads as follows: "The said Indian nations do acknowledge themselves and all their tribes to be under the protection of the United States, and of no other sovereign whatsoever."

By article 3 of the treaty of Jan. 9, 1789,

7 U. S. Statutes at Large, 28.

it is provided, wherein certain lands are given the Indians,

among whom are the Chippewas; "But the said nations or either of them, shall not be at liberty to sell or dispose of the same, or any part thereof, to any sovereign power except the United States, nor to the subjects or citizens of the United States."

This is again repeated with more particularity in article 5 of the treaty of August 3, 1795.

7 U. S. Statutes at Large, 49.

"And the said Indian tribes again acknowledge themselves to be under the protection of the said United States and no other power whatever."

And again in the treaty of July 4th, 1805:

7 U. S. Statutes at Large, 87.

And the treaty of Nov. 17th, 1807:

7 U. S. Statutes at Large, 105.

And by Article 5 of the treaty of November 25th, 1808:

7 U. S. Statutes at Large, 113.

It is further agreed that "the United States on their part do renew their covenant to extend protection to them according to the intent and meaning of stipulations in former treaties."

In the treaty of September 24th, 1818, 7 S. at Large, 203, we find reservations were made, and in the treaty of August 29th, 1821, 7 U. S. Statutes at Large, 218, grants were made, and again in the treaty of July 29th, 1829, 7 U. S. Statutes at Large, 320. And in the treaty of September 26th, 1833, 7 S. at Large, 431, we find the further provision regarding the grants of July 29th, 1829, found on pages 327 and 378 of 7 Statutes at Large, wherein it was found necessary to make the grants in fee.

We have called attention to these several treaties to show the relation sustained by and course of dealing between these Indians and the Government of the United States, which amounts to contract relations, wherein the Government promises protection and the Indians obedience, and for the further purpose of illustrating the construction put upon the word "reservation" as used in these treaties by the treaty making power.

By Sec. 4, Act of July 22, 1790, 1 S. L., 138, purchases from "any Indians, or any nation or tribe of Indians" is inhibited, unless under authority of the United States. By Sec. 7 this act expired in two years.

By Sec. 12, Act of May 19, 1796, 1 S. L., 472, it is enacted "That no purchase, grant, lease or other conveyance of lands,

or any title or claim thereto, from an Indian or nation or tribe of Indians within the bounds of the United States, shall be of any validity in law or equity" unless entered into by treaty or convention under the Constitution or authority of the United States.

By Sec. 22 this act expired in two years.

By Sec. 12, Act of March 3rd, 1799, 1 S. L., 746. This last act was re-enacted, and by Sec. 21 it continued in force for three years.

Sec. 12 of the Act of March 30th, 1802, re-enacts this Sec. 12, and there is no limitation as in previous acts, and it remained the law until the act of June 30th, 1834, where Sec. 12 of which contains the same language except the one word "*or*." Note the difference. Sec. 12 of March 30th, 1802, 2 S. L., 143; "That no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian *or* nation or tribe of Indians," etc.

Sec. 12 of June 30th, 1834, 4 S. L., 730; "That no purchase, grant, lease or other conveyance of lands, or of any title or claim thereto, from any Indian nation, or tribe of Indians," etc. We find it to be in the omission of the word "*or*" italicized above.

It had remained the settled policy of the Government, as manifested through its legislative acts for more than half a century, to inhibit the purchase of lands from an individual Indian, and the only manifestation we have of a change of policy is in the omission of this one word, which more probably arose from an omission in transcribing, than otherwise.

To omit the word *or*, italicized above, and insert a comma makes the same meaning as with the word *or* inserted.

What fact or circumstance had arisen to make so radical a change in the attitude of the Government toward these people as it would be if the contracts of individual Indians were to be placed beyond the supervision of the Government? Their condition had not so changed nor had the time arrived when the Government could emancipate them.

But *leases* and *purchases* from Indian Nations are clearly inhibited. This inhibits purchases from the individuals of those nations, except it be with the consent of the Government, and under its supervision.

Goodell vs. Johnson, 20 Johns, 293,
had then been decided in which Chancellor Kind had said:

"According to that rule, then a prohibition to purchase from the Indians included a prohibition to purchase from any of the Indians; and what comentary can make it plainer." "We ought to give to the words the sense most suitable to the subject matter, and construe them largely and equitably in favor of the Indians, for whose protection they were intended."

And within all the decisions that where an act is prohibited between nations it applies to the individuals of those nations this is prohibitory of leases and purchases from individual Indians. "To regulate commerce is to prescribe the title by which commerce is to be governed."

Gibbons vs. Ogden, 9 *Wheaton*, 1.

U. S. vs. Halliday, 3 *Wall*, 407.

On July 9th, 1832, there was passed "An act to provide for the appointment of a Commissioner of Indian Affairs and for other purposes," 4 S. L., 564, "who shall, under the direction of the Secretary of War and agreeably to such regulations as the President may, from time to time prescribe, have the direction and management of *all Indian affairs and all matters arising out of Indian relations.*"

This is Sections 462 and 463 of the Revised Statutes.

Does then the omission of the word *or* from the Act of 1834 lead the court to the conclusion that the Government had, on mature deliberation, decided to withdraw its guardian care from the individual Indian and yet continue it over the Indian tribes and Nations?

If not, then the foregoing furnishes an abundance of authority for the action of the Department in this transaction, and with the resolution of congress there remains no doubt that appellees' lease never had any vitality and was a mere nullity from its inception and gave them no rights in the premises whatever.

Aside from all statute and usage of the Department, it is a treaty obligation resting upon the Government to protect these Indians and each of them in their rights.

U. S. vs. Mullen, 71 *Fed.*, 682.

U. S. vs. Flourney, 71 *Fed.*, 576.

In conclusion we invite the courts attention especially to

Sec. 2116 Revised Statutes U. S., 369.

and to the opinion of Chief Justice Marshall in

Johnson vs. McIntosh, 8 *Wheaton*, 548.

And the opinion of Chancellor Kent in

Goodsell vs. Jackson, 20 *Johns.*, 693.

and also to the cases of

Godfrey vs. Beardsly, 2 McLean, 412.

Wheeler vs. Me-shing-go-me-sia, 30 Ind., 402-6.

U. S. vs. Shank, 15 Minn., 369 (Gil. 302).

Beck vs. Flourney, 65 Fed., 30.

Eells vs. Ross, 64 Fed., 417.

U. S. vs. Boyd, 68 Fed., 577.

Breoux vs. Johns, 4 Ga. St., 141; 50 Am. Dic., 555.

From the foregoing we deduce the following propositions:

First: That a reservation for the use of an Indian does not create a fee title in the land reserved without further words of grant.

Second: That the Government is the guardian of the Indians, and may annul his contract when it is unjust and oppressive, and against the interest of the Indians.

Third: That the court will follow the construction put upon the contracts and treaties made by and with the Indians, and the course pursued by the political divisions of the Government in the care and control of the Indians.

Fourth: That until approved by the Government the contract of an Indian is not binding and may be annulled.

Fifth: That, notwithstanding the Indian may be the owner in fee of land and exercise the right of citizenship in a state, the Government may exercise its guardian care over him.

Sixth: That this guardianship extends to the individual and is not limited to the tribal aggregate.

Seventh: That the land in question is set apart and held for the use of tribal Indians and is under the control of the Government, and no person has a right thereon except by the permission and consent of the Government, it being a reservation and subject to the same statutes, rules and regulations as a general reservation for the tribe of Indians.

Eighth: That the Government has so treated it and the court will adhere to the construction rules and practice of the Department in dealing with the Indians and their property rights.

IV

THE EQUITIES OF THIS CASE.

The appellees claim under the lease, Exhibits A, B and C (Record 112), procured under the circumstances and conditions narrated by Wells (R. 194, *et. seq.*), and Mon-si-moh

223.

230

(R. 210, *et. seq.*), and La Bessodiere (R. 216, *et. seq.*).

An inspection of the document discloses that it contains no agreement or covenant to be performed by the appellees except "the said parties of the second part agree, at the end of the term of this lease, to quietly surrender possession of said premises unto the said first party, his heirs or assigns;" but the lease is not signed by the appellees and they had never taken possession of the leased premises until after the making and approval of the appellant's lease, and the going upon the land by appellant and staking out the location of his mill, when the appellees built a house partly on the land and partly over the water and put the barbed wire fence along the shore.

But this, we submit, was not such a use as comes within the uses limited within the lease as expressed therein, "intending thereby to convey all shore rights for the time of this lease for lumbering purposes." The thing purporting to be leased is "ten feet wide off the bank of the Red Lake River and Thief River along the waters edge," which is the entire water front of the reservation, of which appellant's lease includes but a small portion.

Lot 1, the land described in appellant's lease, comprises about thirty-one (31) acres of land, for the use of which appellant is paying four hundred dollars (\$400.00) per annum and its chief value is the water front or riparian privileges. The appellees had made no use of it whatever. They had driven some piles in the river thirty feet off the shore and run their logs on the further side of the piles, hence coming nowhere near this shore. In view of all these facts and circumstances, can it be doubted that the appellees procured this apparent lease from the Indian for the express purpose and none other, of obstructing the location of a mill there, the product of which would come in competition with their plant, and looking into the future saw the advantages to be derived, and taking advantage of this uneducated, half-starved Indian, procured his signature to the paper, as hereinbefore referred to?

Here is an illustration of the superior sagacity of the white man over the ignorant, half-clad, hungry Indian. Had the lease, at the date of its execution, been submitted to the Interior Department upon the same terms that appellant's was, would not that office have discovered the value of the right sought? Most certainly they would.

Do not these facts and circumstances show most conclusively, as Chancellor Kent said in *Goodell vs. Jackson*, 20 Johns.,

718: "That an Indian, in his individual capacity, was in a great degree *inops concilii*, and unfit to make contracts, unless with the consent and under the protection of a civil magistrate."

What counsel and advise did Mon-si-moh have in making the contract with appellees? That of Wells, who could do no better than to work as a farm hand on a reservation 100 miles from civilization, and live with a squaw. Again says Chancellor Kent, at page 726: "Frauds are much more likely to happen in contracting with a single, half-naked, unsheltered and unprotected Indian, than with an assembly of grave Chiefs, distinguished not only for valor in war, but for wisdom in council. The Constitution might also be easily evaded, upon this construction, by procuring a sale from the tribe to the individual, and then a sale from the individual to the whites."

The appellees come to the court of equity and ask that this contract be held valid and binding, when if the day after the decree is entered they may remove their hut and barbed wire fence and when the Indian calls for his \$25.00 annual rental, say to him, "we no longer occupy your land and owe you nothing," and when the Indian comes with his suit to the court, be told: "The defendants never promised you any thing and you cannot compel them to pay you if they do not choose to occupy your land." Indeed would the poor Indian conclude that he was *inops concilii* when he made a contract which prevented him from receiving \$400.00 per annum, but which did not bind the other party to pay the \$25.00 per annum which he had agreed to accept.

The appellees' lease is void for want of mutuality. It is not executed by the lessees and contains no covenant binding on them. The appellees have not agreed to occupy and pay rent and had not, at the date of appellant's lease, nor at the date appellant took possession, taken possession, and they are therefore at liberty to vacate and are not bound to pay rent.

Contracts containing mutual covenants must be executed by both parties, and if not so executed are void.

Tewksbury vs. O'Connell, 21 Cal., 61.

Wade vs. Newburn, 77 N. C., 460.

Laughran vs. Smith, 75 N. Y., 205.

Clemens vs. Broomfield, 19 Mo., 118.

Castro vs. Gaffey, 96 Cal., 421.

Barber vs. Burrows, 51 Cal., 404.

Livingston vs. Rogers, 1 Caines, 583.

Townsend vs. Corning, 23 Wend., 435.

The lease is void for uncertainty. The bill claims "ten feet on and along the shore," but the lease attempts to describe some right in "ten feet off the bank for the handling and storing logs."

The Red Lake River is a meandered stream and navigable for vessels of many tons burden.

The shore owner could only use the water for the purpose of landing from or going upon the navigable waters, and could not obstruct the right to the use of the waters by the public. Hence, any use the appellees might make of the water leased must be subservient to the public use.

Yates vs. Milwaukee, 10 Wallace, 497.

Schuemier vs. Railroad Co., 7 Wallace, 272.

It clearly appears that the appellees can not claim ten feet on the shore under the description in this so-called lease, and if defendant has a lease of lot one (1), he has a right to an equal use of the public waters, to bring his logs to his mill, and complainants cannot prevent him from bringing them over and along the public waters and detaining them a sufficient and reasonable time to land them. Hence, their supposed right becomes intangible and valueless. The use is limited to storing and handling logs. They have the right to handle logs on the public waters and the lessor could give them no right to store logs in public waters. The principles here contended for are too well established to need authority to support them.

The claim of the appellees is wholly without equity. They ask this court to decree to them under this lease the right to the use of the entire water front along the Moose Dung reservation, so-called, for which they have never bound themselves to pay anything but the nominal sum of twenty-five dollars per annum, and enjoined appellant from using one fifth of it, thereby depriving the lessor of the rental of \$400.00 a year.

No possession had been taken or use made of this right, until after the approval by the Department of the lease to the defendant. The allegations in the bill of improvements and the use, are shown to be false, and the only improvements, a shanty, not compatible with the use named in the lease, and for colorable purposes only.

Hence, it follows that the appellees have no right in the shore, their only right is the use of the water which is sub-

servient to the public use, and defendant has the right to use the waters equally with the appellees.

But the appellees can claim under their lease only one-sixth of the whole. Granting for the purposes of an argument, that the title of the elder Chief and his heirs is a fee and that the act of Congress has conferred upon them citizenship, the appellees have only one-sixth and defendant five-sixths, and it is the subject of partition only.

And the five heirs not joining in the first lease, have, with full knowledge of the acts of Mon-si-moh, accepted the rent, and have ratified the acts of Mon-si-moh, and the Government in their lease (Defendant's Exhibit 17). And the Government has approved the lease since this record was made up.

The case would then stand at the commencement of this action with appellees having a lease of one-sixth of the water privileges to store logs, and defendant with five-sixths and lot one (1).

By the lease, appellant's exhibit 17, the other five heirs and Mon-si-moh have leased to appellant the remaining five-sixths, which carries with it the use of five-sixths of the water rights.

Hence, it follows that appellees, under their lease, can claim no more than one-fifth, and the decree must be accordingly.

This then leaves only the contention over one-fifth of the shore right dependent upon the question of title under the treaty.

The execution of the lease to defendant by the five heirs of the elder Chief, Exhibit 17, R, has been set up by supplemental answer. This is proper.

"A supplemental answer is filed to bring to the attention of the court some fact which was not inserted in the original through mistake or ignorance, or which has occurred subsequently to the filing of the same."

Foster's Federal Practice, 228, Sec. 154.

Caster vs. Wood, 1 Baldwin, 289.

Smith vs. Babcock, 3 Sumner, 583.

Kelsey vs. Hobby, 16 Peters, 269-276.

In this last case the court said: "This brings us to examine the release and the account stated at the time it was given. Some objections have been made as to the manner in which the release was introduced into the proceedings. It was filed in the cause and a motion therefor made to dismiss the bill; and it is said, that being executed while the suit was pending, and

after the answers were in and the account before the master, it could have been brought before the court by cross-bill or supplemental answer, and could not, in that stage of the proceedings, be noticed by the court in any other way. It is sufficient answer to this objection, to say, that it was admitted in evidence without exception, and both parties treated it as properly in the cause; and the complainant proceeded to take testimony to show that it was obtained from him by duress, and the defendant's to show that it was freely and voluntarily given. It had the same effect that it would have had upon a cross-bill or supplemental answer, and the complainant had the same opportunity of impeaching it. And there is no propriety in requiring technical and formal proceedings, when they tend to embarrass and delay the administration of justice; unless they are required by some fixed principles of equity, law or practice, which the court would not be at liberty to disregard."

An application to file a supplemental answer is in the discretion of the court.

Caster vs. Wood, 1 Baldwin, 289.

Smith vs. Babcock, 3 Sumner, 583.

In

Hardon vs. Boyd, 193 U. S., 756-791.

the court said: "In reference to amendment of equity pleadings, the courts have found it impracticable to lay down a rule that would govern all cases. Their allowance must at every stage of the cause rest in the discretion of the court, and that discretion must depend largely on the special circumstances of each case."

The appellees are estopped from claiming anything under their lease as against the appellant for the reason that they set by and let him procure his lease and expend money in procuring the approval thereof, and themselves procured and sought the approval of another lease subsequent to appellant's lease and not until they had been defeated in this effort did they make any claim under this lease.

This lease of appellees was never filed or recorded in the office of the Commissioner of Indian Affairs.

Such lease may be there recorded.

Act July 26, 1892, 27 Statutes 372, 2 Sup., 51.

If we are correct in our position that this is a reservation, then the recording of this lease in Polk county was not constructive notice to appellant.

The complainants knew that appellant was negotiating for a lease (R. 177 and 184) and never mentioned that they had the lease in question.

The rule is "That where one by his words or conduct wilfully causes another to believe the existence of a certain state of thing, and induces him to act on that belief so as to alter his previous position, the former is concluded from avering against the latter a different state of things as existing at the same time."

Bigelow on Estopped. 249.

"It proceeds upon the ground that he who has been silent as to his alleged right when he ought in good faith to have spoken, shall not be heard to speak when he ought to be silent."

U. S. Bank, vs. Lee, 13 Peters, 110.

Morgan vs. R. R. Co., 96 U. S., 716-720.

He is not permitted to deny a state of things, which by his culpable silence or misrepresentations, he had led another to believe exists, and who acted accordingly upon that belief.

Merchants Bank vs. State Bank, 10 Wallace, 604-645.

A person who stands by and permits property to be sold and does not give notice of a claim of lien is estopped, notwithstanding his incumbrance is matter of public record under Registry laws.

Markham vs. O'Connor, 52 Ga., 183-199.

We submit that the decree is erroneous and should be reversed and a decree entered that the appellees bill be dismissed, with costs of both courts to appellant.

Respectfully submitted,

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United States of America.

Supreme Court.

RAY W. JONES,

Appellant,

vs.

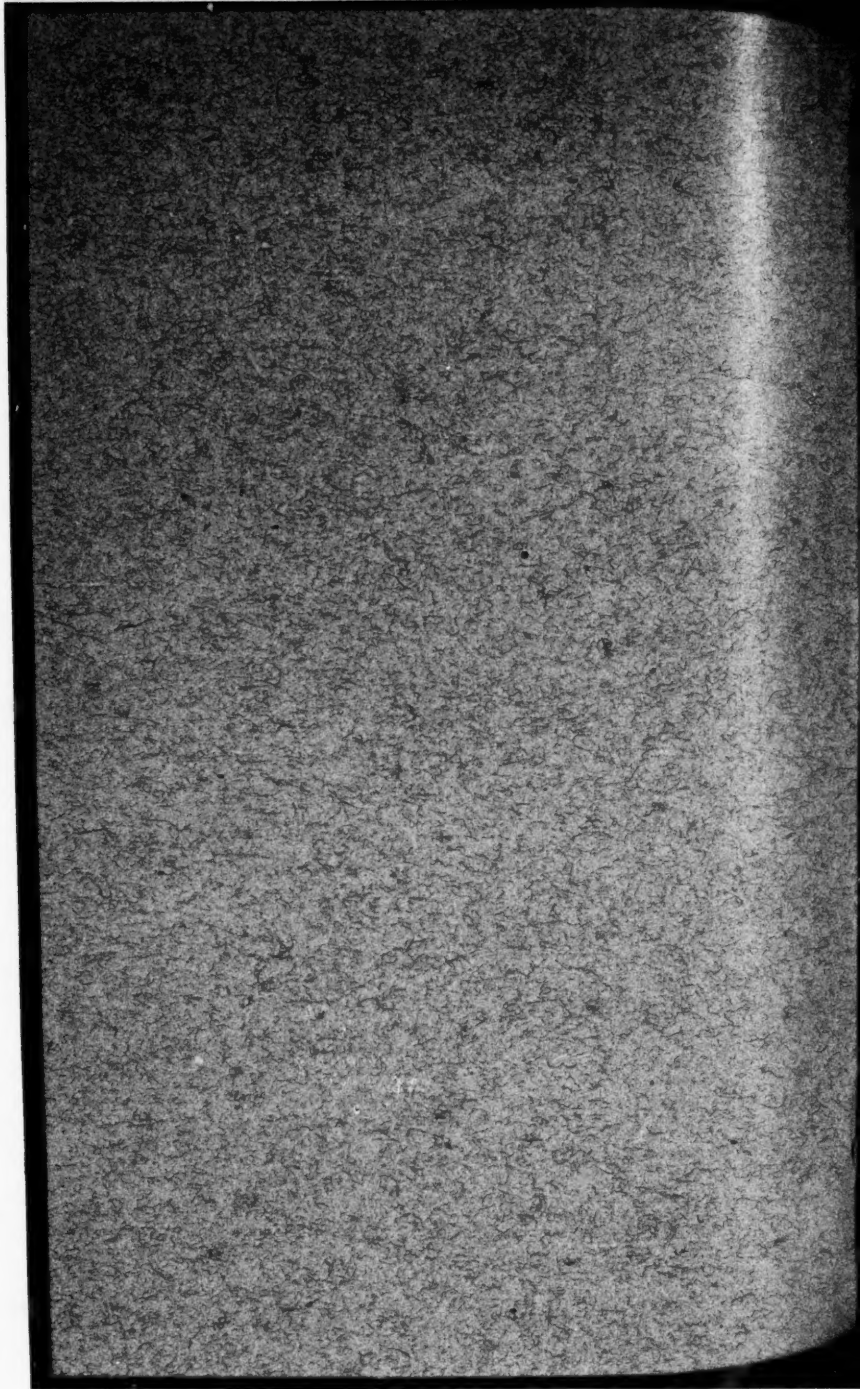
PATRICK MEEHAN AND JAMES MEEHAN,

Respondents.

Appellant's Supplemental Brief.

JAMES A. KELLOGG,

Counsel for Appellant.



UNITED STATES OF AMERICA.

Supreme Court.

RAY W. JONES,

Appellant,

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Respondents.

SUPPLEMENTAL BRIEF FOR APPELLANT.

The brief on file was prepared for the court of appeals, and further research has brought to my attention the following.

For statement of the case see brief heretofore filed.

The purpose of this brief is to discuss the status of the land described in the amended bill of complaint and answer thereto (Rec. pp. 1-9), and the title of the heirs of the original reservee in and to the same, as set forth in the assignments of error numbers IV, V, VI, VII, VIII, IX and X, to-wit:

IV.

That the court erred in finding that article IX of the treaty of October 2d, 1863, between the United States and the Red Lake and Pembina bands of Chipewa Indians, gave to the Indian Mon-si-moh such a title or interest in the selected lands as vested in Mon-si-moh such a title that he could and did execute a valid lease of the strip in controversy to complainants, and that the approval of the secretary of the interior

was not necessary and gave no additional force to the lease.

V.

That the court erred in finding that the lease of November 9, 1891, by Mon-si-moh to the complainants was and is a valid and subsisting demise of the land covered thereby, and that the rights and privileges therein contained should be vested and quieted in them as against the claims of the defendant.

VI.

That the court erred in ordering a decree for the complainants.

VII.

That the court erred in not ordering a decree that the lease to defendant, approved by the government of the United States conveys rights superior to those conveyed under the lease to complainants.

VIII.

That the court erred in not finding that the title held by Mon-si-moh to the land in question is a reservation of an Indian and under control of the government of the United States, and that any lease made by the Indian Mon-si-moh without the approval of the government of the United States is inoperative and void, and conveys no rights to the lessee.

IX.

That the court erred in giving judgment for the complainant.

X.

That the court erred in not giving judgment for the defendant.

ARGUMENT.

The right to the possession of the land they occupy is in the Indian and the fee in the United States.

Beecher vs. Wetherby, 95 U. S. 525, and cases there cited.

And when a reservation is made to a tribe of Indians they have only the right of possession, and when a reservation is made to an individual Indian this is the right reserved, and hence, in this case, this is the only right of the Indian Monsimoh to the land in question.

The treatment of the Indian is a question of governmental policy and has always been recognized by this court from the foundation of the government.

Beecher vs. Wetherby, 95 U. S. 525, and cases cited.

Public grants are to be construed strictly, and nothing passes by implication.

Rice vs. Minnesota & N. W. R. R. Co., 1 Black, 358;

and where a statute operates as a grant of public property to an individual or the relinquishment of a public interest, that construction should be adopted which will support the claim of the government rather than that of the individual.

Slidell vs. Grandjean, 111 U. S. 412.

So that even if the 9th article of the Chippewa treaty operated as held by the court below as a grant to Mon-si-moh, which the appellant denies, the court erred in holding that such grant was a fee simple, as there are no words of perpetuity or inheritance used in the treaty making the reservation.

The language of the treaty is as follows:

"Article 9. Upon the urgent request of the In-

dians, parties to this treaty, there shall be set apart from the tract hereby ceded a reservation of (640) six hundred and forty acres near the mouth of Thief river for the 'Chief Moose Dung,' and a like reservation of (640) six hundred and forty acres for the chief 'Red Bear,' on the north side of the Pembina river."

There is nothing in the language used in this article to indicate an intention on the part of the United States to add its title, which is the fee, to the title of the Indian tribe, which is the right of occupancy, for the benefit of the Indian chiefs mentioned.

There seems to be small ground for contention in the light of the well known policy of the government of the United States in dealing with Indians that any right passed by this reservation for these chiefs greater than the Indian right of occupancy.

As early as September 20, 1833, the attorney-general of the United States had given it as his opinion in the case of reservations to certain Indians contained in the Pottawatomie treaty of October 20, 1832 (7 Stats., 378), that where by treaty the Indians had ceded a tract of country to the United States in the first article and in the second article reserved from the cession large quantities of land in favor of certain individual Indians named therein, the reservations are excepted out of the cession made by the treaty and do not pass by such cession, and that consequently the title to these reservations remained as it had been before the treaty; that is to say, the reservations were still held under the original Indian title.

He also held in that opinion that as the character of the title to the reservations could not be affected by a grant which did not embrace them and from the operations of which they were in express terms ex-

cepted, and as said reservations were still held under the original Indian title, the Indian occupants could not convey them to individuals and no valid cession of their interests could be made but to the United States.

2 Opinions Attorney-General, page 587.

Following this opinion the executive department of the government having control of Indian affairs has repeatedly from time to time expressed the decision, as occasion arose, that where reservations have been made in treaties for individual members of the tribes parties thereto, without any expressed provision for the issuance of patents or without stipulating for a greater estate, the Indian reservee could take only the original Indian right of occupancy and would have no right to make any valid conveyance or lease of such reservations without the consent of the government of the United States given in a lawful manner.

The records of the Indian office give exhibition of this understanding, by the executive department having control of the Indians, of the effect of treaties making reservations for individual Indians, and it is but a fair conclusion that when the president transmitted this treaty to the senate for its advice concerning the ratification thereof, he understood that the reservations in the ninth article for the two chiefs were of the usufructuary or occupancy right of the Indian tribe only.

It is a well established rule followed by the courts in all cases, that where a law is construed by the executive department having charge of its execution, that construction will not be overruled by the courts unless there be cogent reasons therefor.

Railroad Company vs. Whitney, 132 U. S. 357.

Sturr vs. Buck, 133 U. S. 541, 548.

Eells vs. Ross, 64 Fed. Rep. 417.

In a letter dated April 4, 1842, the commissioner of Indian affairs, Mr. T. Hartley Crawford, to Mr. Lewis Benedict, stated that the department had acted on the opinion of the attorney-general of 1833, above cited, and in accordance with that opinion with reference to reservations made for individual occupancy in Indian treaties as follows:

"War Department,
Office of Indian Affairs.
4th April, 1842.

Lewis Benedict,
Albany, N. Y.:

Sir: The secretary of war has referred to me your letter to him of 21st ult., in relation to the reservation provided for Ah-he-te-ke-zhick, by the 2nd article of the treaty of 20 Oct. 1832, with the Pottawatomie tribe of Indians of the Prairie and Kankakee.

This department has heretofore acted and still acts on the opinion of the attorney-general U. S., expressed in 1833, that the reservations made under the aforesaid treaty were 'excepted out of the grant made by the treaty, and did not therefore pass by it,' and that as a consequence, 'the title remains as before the treaty, that is to say, the lands reserved are still held under the original Indian title,' and cannot be conveyed but to the United States.

In some instances congress has relinquished the reversionary interest of the U. S. to certain persons named in the laws (see private acts, chap. 2, approved 18 Feby., '41), and their claims by deed have been confirmed; but in the case you name no such action has been had.

T. HARTLEY CRAWFORD,
Commissioner."

The provision of article 2 of the treaty of October 20, 1832, referred to in this letter, is as follows: "From the cessions aforesaid the following tracts shall be reserved, to-wit," &c.

By the 6th article of the treaty with the Kansas or Kaw Indians of June 3, 1825, (7 Stats., 244), reservations were made for the benefit of individual Indians as follows: "From the lands above ceded to the United States there shall be made the following reservations of one mile square for each of the half-breeds of the Kansas Nation, viz," &c.

The construction of that provision of treaty is shown by letter from the commissioner of Indian affairs, dated July 28, 1845, to E. H. Morton, Esq., as follows:

"Department of Interior,
Office of Indian Affairs.

July 28, 1854.

E. H. Morton, Esq.,

Platte City, Mo.:

Sir: I have received by reference from the secretary of the interior your letter of the 6th instant.

In regard to your enquiries, I have to state that this department has held that under the 6th article of the Kansas treaty of 1825, the Indians therein provided for have only a usufructuary interest in the lands set apart for their use and of course the Indian title must be extinguished before they can be subjected to settlement or sale as public lands.

• GEO. W. MANYPENNY,

Commissioner."

Also by a letter of April 5, 1856, from the commis-

sioner of Indian affairs to E. Hoagland, Esq., as follows:

"Department of Interior,
Office of Indian Affairs,
April 5, 1856.

E. Hoagland, Esq.,

Tecumseh, Kans. Ty.:

Sir: I have received your letter of the 17th ultimo, with its enclosures, which was referred to this office by the secretary of the interior for answer.

The object of your letter seems to be to ascertain how you can acquire a title to a section or a section and a half of land belonging to the half-breeds of the Kansas tribe, on the north side of the Kansas river, to enable you to construct a bridge across the Kansas at or near the town of Tecumseh, in Kansas Territory.

This department has uniformly held that the persons for whom reservations of land were made by the Kansas treaty of 1825, had only a usufructuary interest in the same, and therefore could not alienate their reserves. This being the case, I must say, in reply to your inquiries, that I know of no way in which you can acquire a valid title to any portion of these half-breed lands.

GEO. W. MANYPENNY,
Commissioner."

From a letter dated October 5, 1864, is quoted the following, showing the usual construction by the executive departments at that time of provisions of treaty granting lands to Indians. The treaty referred to was that of 1832, with the Kaskaskia and other tribes (7 Stats., 403), and provided as follows, concern-

ing the reservations affected by said letter: "The Kaskaskia tribe of Indians and the several bands united with them as aforesaid cede * * * the lands granted to them forever by the first section of the treaty of Vincennes of the 13th of August, 1803, reserving, however, to Ellen Decoigne, the daughter of their late chief, who has married a white man, the tract of about 350 acres near the town of Kaskaskia, which was secured to said tribe by the act of congress of 3d March, 1793," to-wit:

"Department of the Interior,
Office of Indian Affairs.

Oct. 5, 1864.

Col. Jonathan Crums, .

Mokence, Ills.:

Sir: Your communication of the 28th ult., asking for information in regard to a section of land reserved for Francois Dequindre, under Pottawatomie treaty of 1826, also in regard to deed for approval in this office from Ellen Decoigne, Kaskaskia Indian; and also in regard to the deed from Joseph Ouilmett, is received.

* * * * *

In reply to your second inquiry, I have to say, that there appears to be no evidence in this office that Ellen Decoigne has conveyed away by deed the reserve made for her by the treaty of Oct. 29, 1832; at least there is no evidence that such deed, if made, was presented to this office for approval, and in answer to your verbal inquiry when here, which was noted on the margin of your letter in pencil, as to whether the approval of the president of a deed of conveyance by said Ellen Decoigne would be necessary to make a valid sale, I would say that it is the opinion of this

office that it would; as the fee simple is not expressly vested in said reservee by the language of the treaty, which is usually the case, when so intended.

* * * * *

JAMES STEELE,
Acting Comr."

The provision of the act of March 3, 1791 (the reference to the act of March 3, 1793, appears to be a mistake), is contained in a proviso to section 6 of said act as follows: "No claim founded upon purchase, or otherwise shall be admitted within a tract of land heretofore occupied by the Kaskaskia Nation of Indians and including their village, which is hereby appropriated to the use of said Indians."

The expression of the construction by the interior department of the provisions of the Chippewa treaty of 1863, making reservation for the Chippewa chiefs named in the 9th article thereof, was expressed in letters from this office to the secretary of the interior and to others, in which the Red Bear reservation was discussed as follows:

Department of the Interior,
Office of Indian Affairs.

March 25, 1882.

The Honorable the Secretary of the Interior:

Sir: Referring to my communication to you of the 23d instant, relative to the request of E. McMurtrie, to be furnished with certain information regarding the reservation directed to be set apart for the chief, Red Bear, I have to add, in reply to his inquiry, that the

lands allotted to the heir of Red Bear cannot be alienated, no patent having been issued therefor.

Very respectfully,

Your obedient servant,

H. PRICE,

Commissioner."

"Department of the Interior,
Office of Indian Affairs,

March 25th, 1882.

The Honorable the Secretary of the Interior:

Sir: I have the honor to acknowledge the receipt, by department reference for report, of the letter of Hon. Thad. C. Pound, chairman of the House Committee on Public Lands, dated the 10th instant, in which he encloses copy of House Bill No. 4633, to authorize the Commissioner of the General Land Office to issue a patent to the heir of Red Bear, and asks the views of the Department thereon.

The ninth article of the treaty between the United States and the Red Lake and Pembina bands of Chippewa Indians, concluded October 2, 1863 (13 Stats., 669), provided that there should be set apart a reservation of six hundred and forty acres for the chief, Red Bear, on the north side of the Pembina river.

Under said authority there was allotted to Tib-ish-co-ge-shig, heir to Red Bear, the east half of section seven and west half of section eight, township one hundred and sixty-three, range fifty-six, in the territory of Dakota. This allotment was recommended by this office on the 17th of March, 1880, and approved by the Commissioner of the General Land Office November 10, 1880.

As the treaty does not provide for the issuing of a

patent, the enactment of a law authorizing such issue is necessary to give the allottee title to the land in question. I think, however, that the patent should contain the usual restrictions as to alienation, incumbrance, etc., for the protection of the patentee.

I therefore respectfully recommend that the following proviso be added to the bill: 'Provided, that the land so patented shall not be subject to alienation or to lease or incumbrance, either by voluntary conveyance or by the judgment, order or decree of any court, or subject to taxation of any character, but shall be and remain inalienable, and not subject to taxation, lien or incumbrance for the period of fifteen years from the date of the patent, which said restrictions shall be incorporated in the patent when issued. And if any conveyance shall be made of the land patented before the expiration of the time above mentioned, the contract shall be absolutely null and void.'

I return the bill herewith.

Very respectfully,
Your obedient servant,
H. PRICE,
Commissioner."

"Department of the Interior,
Office of Indian Affairs,
July 31st, 1883.

Henry A. Mayo, Esq.,
Walhalla, Dakota.

Sir: I am in receipt, by reference from the General Land Office, of your communication dated July 12, 1883, in which you state that by the treaty between the United States and the Chippewa Indians, conclud-

ed October 2, 1863 (13 Stats., 667), a tract of 640 acres was set apart to Chief Red Bear, and that the following lands are so reserved: The W $\frac{1}{2}$ Sec. 8 and E $\frac{1}{2}$ Sec. 7, T. 163, R. 56.

You ask if the heirs of Chief Red Bear can sell and give good title to the same, or if they can execute a valid lease for a term of years.

In reply I have to state that under the authority of article nine of said treaty the lands above described were allotted to Tib-ish-co-ge-shig, heir of Red Bear, November 10, 1880.

As the treaty does not provide for the issuing of a patent, the enactment of law authorizing such issue is necessary to give the allottee title to the land in question, and this office, on the 25th of March, 1882, recommended the passage of a bill by Congress authorizing the issuance of a patent with a clause providing that the land to be patented should not be subject to alienation or to lease or incumbrance for a period of fifteen years from date of said patent. This bill failed of passage.

The heirs of Red Bear, therefore, cannot convey title to, or lease, the land in question.

It is now understood that there are other heirs than Tib-ish-co-ge-shig.

Very respectfully,

H. PRICE,

Commissioner."

It will be observed that the War Department, while the supervision of Indian affairs was in that department, and the Interior Department, since 1849, when the Indian office was transferred to that department, has held uniformly since 1833 that the reservation of

land in a treaty to be selected on the lands ceded by said treaty for the benefit of individual members of the tribe making the cession operated as an exception of the land to be reserved from the cession and the continuance of the Indian title in said lands without the right of alienation except to the United States, unless in the language of the treaty making the reservation words be used to indicate a clear intention on the part of the contracting parties that the Government of the United States will add to the Indian occupancy right its fee simple to complete the title in the reserve. This was the position of the Interior Department with respect to naked reservations, as was the case of these chiefs at the time the treaty of 1863 was negotiated, and it is not to be supposed that when the officers of the United States, who were officers of the Interior Department, under instructions from that department and reported to that department, agreed with the Chippewas of the Red Lake and Pembina bands, at their urgent request, to set apart out of the land ceded two reservations for the chiefs named, it was understood by them that these reservations would be held by these chiefs by any greater right than the right always recognized by the Interior Department as passed by the language used, viz., the right of occupancy.

There is further evidence of the intention of the government with respect to these reservations contained in the resolution of the Senate ratifying the treaty with amendments. It will be observed that one of the amendments inserted by the Senate is to article 8 of the treaty, providing for grants of land to male adult half-breeds or mixed-bloods, relatives of the Indians parties to said treaty.

Attention is first invited to the word used in article 8, which is "grant," and also to the fact that article 8 provides for the granting of lands to the half-breeds and mixed-bloods only where they have adopted the habits and customs of civilized life and are citizens of the United States.

By the amendment of the Senate above referred to it will be observed that provision is made that no patent shall issue even in the case of these grants until due proof of five years actual residence and cultivation, as required by the homestead laws of the United States shall have been made.

In article 8, the term used is "grant;" in article 9, the term is "set apart * * * a reservation." It is very clear that a distinction was intended to be made by the contracting parties to this treaty, between the lands granted to the half-breeds and mixed-bloods, and the lands reserved for the two chiefs named.

Again referring to the reservations made in the Pottawatomie Treaty, in 1832, attention is invited to the fact that congress deemed it necessary in 1848, to add to said reservations the fee by Act of May 26th, of that year (9 Stats., 213), because of the fact that the reservees under the treaty took only the usufructuary title which was inalienable except to the United States.

Attention is invited to the fact that in negotiating a treaty with the Pottawatomie Indians in 1861, (12 Stats., 1191) provision was made for allotment of lands to the Pottawatomies, which were made inalienable except to the United States or members of the tribe, unless by a provision of said treaty, the allottee should in accordance therewith become naturalized by proceedings in a court of justice a citizen of the United

States, when his allotment should be then patented to him in fee simple.

Article 2, of the Shawnee Treaty of 1854, provided for the reservation of lands for individual Shawnees, and it is provided in article 9 "that congress may hereafter provide for the issuance to such of the Shawnees as may make separate selections patents for the same with such guards and restrictions as may seem advisable for their protection therein." (10 Stats., 1053.)

Numerous other treaties were made prior to and about the time of the treaty of 1863 with the Chippewas of Red Lake and Pembina bands, in which provision was made for reserving tracts for individuals, and in no case was provision made by such treaties giving to the parties who were designated as reservees the right without restriction of alienation of the reserves, but where it was intended that the Indians should ultimately have the fee in the land, provision was made for the granting of the fee either by act of Congress, when Congress should deem it expedient, or upon the happening of some contingency, as in the case of the Pottawatomie Indians.

It will also be shown by the statutes that many treaties were made after the treaty of 1863 with the Red Lake and Pembina bands of Chippewas, wherein reservations or grants were made to the Indians, and that in all cases where it was intended by the contracting parties that a greater title than the Indian right of occupancy should pass, it has been distinctly expressed.

That the reservations in the Kansas treaty of 1825 (*supra*) did not convey any fee is conclusively shown by the act of May 26, 1860 (12 Stats., 21), in which Congress vested all the title, interest and estate of the

United States to the lands reserved in the reserves, provided that they were not given any right to sell or dispose of the lands or enter into any contract in writing or otherwise having binding effect on said lands without the approval of the Secretary of the Interior, and the further fact that by the joint resolution of July 17, 1862 (12 Stats., 628), Congress repealed that part of the act of 1860 which prohibited sales and conveyances by the reserves, thereby vesting in them the complete fee; also by the decision of the supreme court in *Smith vs. Stevens* (10th Wallace, 321), wherein the court held that a deed from a Kansas half-breed Indian conveying the lands reserved under said treaty of 1825, prior to the joint resolution of 1862, was absolutely null and void.

The errors of the court below in reaching its conclusions in this case will be more pointedly apparent upon an examination of the authorities cited in support of its contention.

In the first place, the court refers to the act of 1849 (9 Stats., 403-408), organizing the territory of Minnesota, wherein, by the 18th section, it is provided that when the lands in said territory shall have been surveyed under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered 16 and 36 in each township in said territory shall be and "the same are hereby reserved for the purpose of being applied to schools in said territory and in the states and territories hereafter to be erected out of the same," and to the act of 1857 (11 Stats., 166), enabling the people of the territory of Minnesota to form a constitution and state government preparatory to their admission into the Union, in which act it was provided that 72 sections

of land "shall be set apart and reserved for the use and support of a state university to be selected by the Governor of said state, subject to the approval of the Commissioner of the General Land Office, and to be appropriated and applied in such manner as the legislature of said state may prescribe for the purpose aforesaid, but for no other purpose," and the court declared that in neither of the cases of the two acts cited has it ever been questioned but that a fee simple passed, although no patents have been issued, or were necessary to confer title to the lands.

It is a fact, however, that when the government of the United States, in organizing territories of the United States, reserve lands for school purposes, no title whatever passes to the territory. This was evidently thought to be the fact in the case of the territory of Minnesota, otherwise there would have been no necessity whatever for the act of February 19, 1851 (9 Stats., 568), authorizing the Governors of the territories of Oregon and Minnesota, and the legislative bodies thereof, "to make such laws and needful regulations as they shall deem most expedient to protect from injury and waste sections numbered 16 and 36 in said territories reserved in each township for the support of schools therein."

That the territories have no control over the reserved school sections is shown by the many acts of Congress, when it has been deemed advisable, authorizing the leasing of school lands within the territories. See act of January 9, 1815 (3 Stats., 163), relating to the school lands within the territory of Mississippi; also the act of 1894 (28 Stats., 71) relating to the school lands within the territory of Oklahoma; also act of June 13, 1812 (2 Stats., 748), reserving land for school

purposes for the city of St. Louis and other towns within Missouri, and the act of January 27, 1831 (4 Stats., 435), granting the fee in the reserved lands to the towns intended to be benefited. These acts show that in the cases named the government did not construe a reservation as conveying the fee.

Nor did any fee pass to the state of Minnesota by the provisions contained in the act of 1857, concerning the reservation of 72 sections for university purposes. In that case the state took only as trustee, with a discretion as to the manner in which the land should be disposed of, but without discretion as to the purpose to which they should be applied.

Rice vs. Railroad Company, 1 Black 358.

The decision of the supreme court in *Gaines vs. Nicholson*, 9 Howards 365, does not support the position of the court below, but, rather, is in support of the contention of the appellant.

In that decision the question of a right of an Indian reservee under the Choctaw treaty of Dancing Rabbit Creek of September 27, 1830 (7 Stats., 333), or the grantee of such reservee as against the right of the territory of Mississippi in the school section was under consideration, and it was held that the reservation was "so much carved out of the territory ceded and remain to the Indian occupant, as he had never parted with it. He holds, strictly speaking, not under the treaty of cession, but under his original title confirmed by the government in the act of agreeing to the reservation."

In the case of that decision the articles of treaty being construed were supplementary to the main treaty of the Indians which provided for the giving of reservations to the Choctaws, and which had to be

considered in its entirety in the construction of the rights passed to the reservees.

In the main treaty it is provided that in the construction of the treaty, wherever well founded doubts should arise, it should be construed most favorable towards the Choctaws; and taking the whole treaty into consideration, the clear intention was that the reservees should have the right of alienation under certain conditions.

The case of *Glenn vs. Glenn* (41 Alabama 582) does not appear to be applicable to the questions involved in this case.

In *Best vs. Polk* (18 Wallace 112) the treaty under consideration was that with the Chickasaw Nation of May 24, 1834 (7 Stats., 450); no decision concerning the rights of reservees under that treaty would be applicable in this case, in view of the language used providing for the reservations and the circumstances under which the treaty was negotiated.

It will be observed that by article 5 it is provided "that it is agreed that the fourth article of the treaty of 'Pontitock' be so changed that the following reservations be granted in fee," followed by the description of the reservations meant; and that the next article begins with the words "also reservations of a section to each shall be granted to persons, male and female," etc.

But the fourth article of the treaty contains much more significant language, and conveys a very clear idea of the intention of the contracting parties with regard to the title that would be taken by the reservees generally under the treaty. That article is in part as follows:

"The Chickasaws desire to have within their own

direction and control the means of taking care of themselves. Many of their people are quite competent to manage their affairs, though some are not capable and might be imposed on by designing persons; it is therefore agreed that the reservations hereinafter admitted shall not be sold, leased or disposed of unless it appear by the certificate of at least two of the following persons * * * that the party owning or claiming the same is capable to manage and to take care of his or her affairs, which fact, to the best of his knowledge and information, shall be certified by the agent; and, furthermore, that a fair consideration has been paid; and thereupon the deed of conveyance shall be valid, provided the President of the United States, or such other person as he may designate, shall approve of the same and endorse it on the deed." * * *

In view, therefore, of the language of this treaty and the expressed and elaborate arrangements for the alienation of the reservations, no decision confirming the title of the reservees under that treaty would authorize the court to declare that the "Moose Dung" reservation was granted in fee by the Chippewa treaty of 1863, which contains nothing indicating such an intention.

The decision in *Newman vs. Doe*, 4 How. (Miss.) 561, cited by the court, involves questions touching the rights of a Choctaw Indian reservee under the Dancing Rabbit Creek treaty, and can have no bearing on this case for the reasons above assigned to show the inapplicability of the decision in *Gaines vs. Nicholson* (supra), to-wit: The language used in that treaty touching reservations contain words intended to authorize the sale of the reservations by the reservees under certain conditions and limitations.

Niles vs. Anderson, 5 How. (Miss.) 365, involved a reserve under the Chickasaw treaty of May 24, 1834 (*supra*), and since, as is above shown, provision was made in that treaty for the sale of the reservations by the reservees, this case cannot be invoked to sustain a contention that the ninth article of the Chippewa treaty of 1863 was intended to convey the fee in the reservation thereby provided to be "set apart" for the chief "Moose Dung," as neither in that article nor in any other provision of the treaty were any words used that can, by any reasonable interpretation, be construed as providing for the sale, lease or other conveyance by the said chief of the lands reserved.

The case of the *United States vs. Brooks* (10 How. 442) involved the grants provided for in the supplementary articles to the Caddo treaty of July 1, 1835 (7 Stats., 472), and, as the language used in those articles contained both words of inheritance and perpetuity, to-wit: in article 1 the words "their heirs and assigns forever," and in article 2 the words "his heirs and assigns forever," this case is not in point to sustain the conclusion reached by the court below touching the title of the heirs of the reserve in the "Moose Dung" reservation.

The case of *Doe vs. Wilson* (23 How. 457) not only does not authorize the conclusions of the court below, but strongly sustains the contention of the appellant, that the right of the heirs of Chief "Moose Dung" in the reservation is the Indian right of occupancy. That case involved a reservation under the Pottawatomic treaty of October 27, 1832 (7 Stats., 399), which provided for individual reservations, and promised that they should be conveyed by patent, as follows: "The United States agree to grant to each of the following

named persons the quantity of land annexed to their names, which lands shall be conveyed to them by patent," etc.

It will be observed that these reservations were to be granted, not set apart for the persons named, yet in discussing these grants the court in *Doe vs. Wilson* said: "The reservee took by treaty, directly from the Nation, the Indian title, and it was right of occupancy use, and enjoyed his lands in common with the United States until partition was made. The treaty itself converted the reserved sections into individual property." The reservees under the ninth article of the Chippewa treaty of 1863 took "by treaty directly from the bands parties to said treaty the Indian title of use and occupancy, and they have, since the reservees have been located, enjoyed the land in common with the United States; but there was no provision in the treaty contemplating a partition, and no partition has in fact been made. They, therefore, still have only the Indian right of occupancy, which is a right to use without the right of alienation, except to the United States, with their consent, given in lawful manner and under lawful authority.

The remaining case cited by the court in support of its conclusions is *Prentice vs. R. R. Co.* (43 Fed. Rep. 275). This suit related to the chief Buffalo reservation under the Chippewa treaty of 1854 (10 Stats. 2199), which provided that "and being desirous to provide for some of his connections, who have rendered his people important services, it is agreed that Chief Buffalo may select one section of land at such place in the ceded territory as he may see fit, which shall be reserved for that purpose, and conveyed by the United States to such person or persons as he may direct." In this case

the promise that the United States would convey the selected land converted the title, not the provisions, for the selection of the one section by the chief, and the case is not one in point.

It will be seen from the examination given to the authorities cited by the court below that it has never been held by any court that the words "set apart," "reservation" and similar terms in themselves convey a fee in the lands affected, and in all cases where it has been held that the reserve took a larger estate than that of the tribe, the words of reservation have been used in connection with other words, qualifying or enlarging the title which passed by the reservation.

The case of *Monsimoh vs. appellees* was not dismissed because of want of authority in the solicitor of appellant to bring the action, but because the diverse citizenship between an Indian, not a citizen, and a white man, the citizen of another state, does not confer jurisdiction on the federal courts. Judge Lochren remarked that the solicitor had abundant authority for endorsing the bill, and that it appeared that the complainant *Monsimoh* had signed the bill, which alone would be sufficient authority.

Respectfully submitted,
JAMES A. KELLOGG,
Counsel for Appellant

200.
P. 608. 227.

Brief of O'Brien & Rinehart for
James H. McKenney, Appellee.

Office Supreme Court, U. S.
FILED.

OCT 13 1896

JAMES H. MCKENNEY

Filed Oct. 13, 1896.

Supreme Court,

Of the
UNITED STATES.
October Term A.D. 1896.

No. 608.

RAY W. JONES,

Appellant,

vs.

PATRICK MEEHAN and JAMES MEEHAN,

Appellees.

The appellees oppose the motion to advance this cause upon the calendar, and for the following reasons, to wit:

First: That sufficient notice has not been given, in that the same was not served upon counsel for appellees, in the state of Minnesota, until the 3rd day of October, 1896.

Second: That the record herein has not been printed pursuant to the rule of this Court, and that no copy thereof has been furnished appellees.

Third: That no sufficient reason for the granting of the same is alleged.

And appellees urge, in support of their contention that sufficient notice has not been given, that, by analogy to the rule of this Court in regard to notice of motion to dismiss, the notice should have been served at least three weeks pri-

or to the day of hearing.

Further, as the record has not been printed, and no copy furnished counsel for appellees, it would seem that the motion is prematurely made.

The record printed below and used in the Court of Appeals for the Eighth Circuit, upon the hearing of the motion made by appellees to dismiss the appeal heretofore taken to that Court, is imperfect, and the use of the same in that Court was only consented to by appellees in the confident expectation (which was realized) that the appeal taken to that Court would be dismissed for want of jurisdiction.

This cause does not involve any such question as is alleged in the motion herein, or any question of public importance, or any such question as, under the rules and practice of this Court, entitles the same to precedence over other pending controversies involving questions of private rights.

No question involving the right of the government to supervise or control the contracts of Tribal Indians is presented, nor any question arising under any Intercourse Act, law or treaty, save only the particular article of the treaty in question which contains reservations to two Indians only, and of these only a leased portion having an alleged rental value of Four Hundred Dollars per annum, is in any way in controversy.

The only questions involved are as to whether under the terms of Article 9 of the Treaty of October 2nd, 1863, with the Red Lake and Pembina Bands of Chippewa Indians, such a right or interest in the lands thereby reserved vested in the Chief Mon-se-moh, named therein, that upon his death the same descended to and was inherited by

his son and heir-at-law, the present chief, the common lessor of the parties hereto, and as to whether, the lands having been definitely located by subsequent selection, the present chief has the right to make a lease of the same without the necessity of approval by the officers of the government.

The land in controversy is a strip ten feet in width and about 750 feet in length along the Red Lake River, of which appellees obtained a lease in 1891. Later, in 1894, appellant obtained a lease of about thirty acres, including said strip, and appellant's lease was approved by the Secretary of the Interior. Appellees' lease was never so approved, and its approval never sought, the statement to the contrary in the motion being false, as shown by the record.

Appellees claim that the reservation contained in the treaty stipulation operated as an absolute grant, the definite location of which was fixed by subsequent selection made by the present chief and the proper officers of the government, and that the same became an allotment to him within the meaning of the Allotment Act of 1887, thereby making him a citizen of the United States, the entire controversy depending upon the construction of the language of the article referred to—identical terms not appearing in the provisions of any other law or treaty.

We submit that the cause should take the ordinary course.

Respectfully,

C. D. O'BRIEN.

ORVILLE RINEHART.

Counsel for Appellees.

And of them who in company with the
section that is now in the
hall, by order of the
Committee of the
House of Representatives
was ordered to be
referred to the
Committee on
Education and
Labor.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1897.

RAY W. JONES,
APPELLANT,

v.

PATRICK MEEHAN AND JAMES MEE-
HAN,
APPELLEES.

No. 237.

Appeal from the United States Circuit Court for the
District of Minnesota.

BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

This was a suit to quiet title to a strip of land ten feet in width along the westerly shore of the Red Lake River, in the county of Polk and State of Minnesota, extending from the northeasterly intersection of the plat of the village of Thief River Falls with said shore to a point near the junction of the Thief and Red Lake rivers, and being a part of lot No. 1 one (1) of section No. thirty-four (34) in township No. one hundred and fifty-four (154) N. of range

No. forty-three (43) W., and which constitutes the westerly side of a mill-pond, used by appellees for the purpose of stringing booms and storing logs, appurtenant to a sawmill owned and operated by them at that place.

The appellees claim under a lease made and executed by one Mon-si-moh, or Moose Dung, a chief of the Red Lake band of Chippewa Indians, dated November 7, 1891, and duly filed and recorded in the office of the register of deeds in and for the said county of Polk on the 10th day of November, 1891, leasing to them the land in controversy for the term of ten (10) years from the date thereof.

The appellant claims a right to the possession of the whole of said lot one (1), embracing the lands in controversy, under a lease dated July 20, 1894, from said Mon-si-moh to appellant, and thereafter modified and approved by the Secretary of the Interior of the United States.

The appellees are both residents and citizens of the State of Wisconsin, and the appellant is a resident and citizen of the State of Minnesota. The matter in dispute exceeds in amount the sum or value of five thousand dollars, and involves the interpretation and construction of a certain article of the treaty between the United States and the Red Lake and Pembina bands of Chippewa Indians concluded at the Old Crossing of the Red Lake River October 2, 1863.

At the time of the commencement of this suit the appellees were in actual possession and occupancy of the premises; and the appellant having asserted a right to possession and attempted to enter thereon, an injunction in restraint thereof issued *pendente lite*, and was made permanent by the final decree.

Prior to its cession to the United States, the Red Lake and Pembina bands of Chippewa Indians claimed to own

all the territory west of the line of the cession made by the Chippewas of the Mississippi, Billager and Lake Winnibigoshish, including the vast extent of country round about Red Lake and the Red River of the North.

By the treaty of October 2, 1863, the Indian title was extinguished to all territory west of the Thief River in the State of Minnesota, across the Red River of the North, and to the boundaries of the disputed Sioux country at the headwaters of the Cheyenne.

That treaty was concluded between Hon. Alexander Ramsey, then a Senator of the United States from the State of Minnesota, and Ashley C. Morrill, United States Indian agent in charge of the Chippewa Indians in Minnesota, commissioners on the part of the United States, on one side, and the chiefs and head men of the Red Lake and Pembina bands of Chippewa Indians, on the other, in council; and was thereafter advised and consented to by the Senate of the United States. (13 Stat. 669.)

Mr. Joseph A. Wheelock was secretary of the council during the negotiations, and Mr. Paul H. Beaulieu, official interpreter for the Chippewa Indian Commission, was the interpreter between the contracting parties.

A part of the consideration for this vast cession was the grant by the United States, out of the ceded country, of a section of land, to the Chief Moose Dung, made by Article IX of the treaty, which in terms is as follows:

"That upon the urgent request of the Indians, parties to this treaty, there shall be set apart from the tract hereby ceded a reservation of six hundred forty (640) acres near the mouth of Thief River for the Chief Moose Dung." (13 Stat. 669.)

This chief was one of the principal chiefs of the bands

entering into the treaty; his name appears first among the signers to the instrument, and he died before the extension of the public surveys over the territory in question, leaving surviving him a son and heir, the present Chief Mon-si-moh, or Moose Dung, appellees' lessor.

At the time of the making of such survey, and about the 10th of September, 1879, the present Chief Moose Dung, having previously indicated to the proper officers his desire so to do, did make selection, by legal subdivisions according to the lines of the Government survey, of the tract of land to which he was entitled by the provisions of the article of the treaty; which selection was approved by the Secretary of the Interior, and the lands comprised therein were officially designated and reserved from other disposition by the United States.

Lot No. one (1) in section thirty-four (34), ten feet of the shore line of which constitutes the property in controversy in this suit, is a portion of the lands so selected and set apart.

From the time of such selection to the date of making appellees' lease, the present Chief Moose Dung lived upon, cultivated portions of, exercised dominion over, and claimed to own the lands so selected; and during all the time since the making of the treaty the two chiefs, in succession, have sustained tribal relations with the tribe or band of Indians resident upon the adjacent and formerly unceded Red Lake Indian lands, now known as the Red Lake reservation.

The lease from Moose Dung to the appellees leased unto them, for the term of ten years, at an annual rental of twenty-five dollars, ten feet of the bank of Red Lake River, along the west shore of the river, across said lot one (1), etc., to be used for sorting logs, erecting piers and booms, and for purposes connected with lumbering,

and conveyed all shore right in the premises. It was signed, sealed, witnessed, and acknowledged on the 7th day of November, 1891, and was properly recorded, on the 10th day of the same month, in the office of the register of deeds of the county wherein the land lies. The appellees accepted the lease and have fully performed, on their part, all of its terms and conditions, and shortly after its execution, and in the year 1892, entered upon the premises, drove piling, strung booms, and used the same in the manner customary with lumbermen exercising shore rights; and before the commencement of this suit had erected and occupied on the ten-foot strip a house, and had enclosed the strip with a fence.

At the time of the making of the lease the land selected by Moose Dung was used only for grazing purposes. It is in the vicinity of the village of Thief River Falls, which then contained but about fifty inhabitants, and there was then no railroad or industry of consequence there and land was of little value.

Shortly after the making of the lease the appellees erected on the river, a short distance below the land in controversy, a large sawmill, and, conditioned on building the same, they induced the Great Northern Railway Company to extend its line of railroad into the village, which has since developed into a place of some importance.

The lands in controversy constitute one shore of the mill-pond appurtenant to the appellees' sawmill, and are claimed to be indispensable to its operation.

On the 20th day of July, 1894, and while appellees were in the use and occupancy of the premises in the manner detailed, the appellant obtained a lease from the same lessor, Moose Dung, of the whole of said lot No. one (1), embracing the ten-foot strip leased to the appellees, and

afterwards presented the same to the Secretary of the Interior for approval, and the same was, after modification, approved by him, and, claiming under said lease and approval, the appellant has attempted to enter into possession of the strip occupied by appellees.

These facts are not disputed.

The appellees, by their amended bill, assert the absolute title of their lessor, the Indian chief, to the land in controversy, while the appellant, in his answer, alleges the Indian to hold only a limited or qualified estate therein, subject to the paramount title of the United States, and that a lease or conveyance thereof by the Indian, in order to be of any validity, must have been made under the sanction and with the approval of the officers of the United States charged with the administration of Indian affairs; and although many other allegations in relation to the actual possession of the appellees and their rights to a preliminary injunction, and the bona fides of the respective parties, are contained in the pleadings, these latter were all, upon the final hearing, subordinated to and merged in the decisive question as to the nature of the title held by the Indian chief, their common lessor.

The testimony was taken before a special examiner, and a vast amount, both oral and written, was introduced by each of the parties—that of the appellees being directed more especially to proof of their lease and possession thereunder and the notice to the appellant of the same, and to proof of the intention of the parties to the treaty in support of the alleged title of the Indian; and that of the appellant to proof of his lease and the approval thereof by the Secretary of the Interior, and his lack of notice of any rights or possession of the appellees in the premises, and finally to the proof of an additional lease from five other alleged heirs of the deceased Chief Moose Dung,

which he attempted to set up by way of supplemental answer; both parties uniting in the introduction of the treaty and plats of the lands, with the proceedings had in the survey, selection, and definite location of the same, at the request of the Indian, by officers of the Government.

The decree of the Circuit Court having been in favor of the appellees, complainants therein, and a decree entered accordingly, the appellant, defendant therein, has taken and perfected an appeal to this court, predicated upon the several assignments of error contained in the record.

In this connection it is fitting to remark that, notwithstanding the great bulk of the testimony introduced in the cause, there is but little conflict in the evidence, and that mostly upon issues comparatively unimportant.

THE PROPOSITIONS CONTENTED FOR BY THE APPELLEES.

These are:

I. That, by the provisions of the treaty of October 2, 1863, the Chief "Moose Dung," ancestor of appellees' lessor, became vested with the absolute title to 640 acres of land, within the ceded country, near the mouth of Thief River, the definite boundaries of which were to be established by subsequent selection.

II. That, upon the decease of the Chief "Moose Dung," the reserve named in the treaty, in 1872, the estate thereby granted descended to and was inherited by his eldest son, the present Chief "Moose Dung," appellees' lessor, as heir at law and successor.

III. That the selection of the lands in controversy by the heir and successor of the original grantee, and the designation thereof, in 1879, by the officers of the Department of the Interior, operated to identify and permanently establish the location and boundaries, and finally effectuate and complete the terms of the grant.

IV. That, in 1891, at the time of the making of appellees' demise, the lessor therein, the present Chief "Moose Dung" possessed the inherent right, and full power and qualification, to make and execute any contract or conveyance in relation to, or disposing of, the lands in controversy.

V. That the appellees' demise is a good, valid, and binding lease of the lands in controversy, duly executed by said present Chief "Moose Dung," and accepted by the appellees, who have, upon their part, performed all the terms and conditions thereof and entered into, and ever since the date thereof have been in, the actual possession and occupancy of the lands in controversy thereunder.

VI. That at all times during the negotiations alleged to have been had by appellant respecting the lands in controversy he had notice of the existence of appellees' prior lease thereof, and knowledge of their possession and occupancy of the premises thereunder.

VII. That the alleged lease under which the appellant claims is invalid, of no legal force or effect, and insufficient to create any interest in, or right to, the possession of the property in controversy.

VIII. That the alleged lease which appellant attempted to set up by way of supplemental answer is invalid and of no force or effect, and insufficient to create any interest in, or right to, the possession of the property in controversy, and that appellant's motion for leave to file the said supplemental answer was properly denied.

I.

Appellees' first contention is that by the provisions of the treaty the Chief "Moose Dung" became vested with the absolute title to 640 acres of land the definite boundaries of which were to be established by subsequent selection.

The important subject for consideration, in the discussion of this proposition, is the effect of the following treaty stipulation :

Article IX. "Upon the urgent request of the Indians, parties to this treaty, there shall be set apart from the tract hereby ceded a reservation of (640) six hundred and forty acres near the mouth of Thief River for the chief 'Moose Dung,' and a like reservation of (640) six hundred and forty acres for the chief 'Red Bear,' on the north side of Pembina River."

This treaty was entered into by the treaty-making power of the United States, under the provisions of the federal Constitution, with a tribe or band of the Chippewa nation of Indians, recognized as capable of entering into and maintaining treaty relations by the political department of the Government. It must be conclusively presumed that the Indians were properly represented by their chiefs or head men at the making thereof.

There can be no doubt of the right of the treaty-making power to alienate portions of the national domain ; this is a right so well recognized by the settled law of

nations as to call for but casual reference ; and grants by treaty by the United States to individuals have been very numerous.

This practice early obtained the sanction of the Supreme Court, in the case of *Johnson v. McIntosh*, 8 Wheat. 598, where it was said : "The usual mode adopted by the Indians for granting lands to individuals has been to reserve them in a treaty, or to grant them under the sanction of the commissioners with whom the treaty was negotiated."

And more recently : "There are many authorities where it is held that a treaty may convey to a grantee good title to such lands without an act of Congress conferring it."

Holden v. Joy, 84 U. S. 247.

And while the constitutional power to settle rights under treaties in cases purely political reposes entirely in Congress, "that is the peculiar province of the judiciary in cases involving controversies between individuals."

Wilson v. Wall, 6 Wall. 83.

And, "so far as treaties concern the rights of individuals, it is often necessary for courts to ascertain by construction the meaning intended to be conveyed by terms used."

Id. and *U. S. v. Rauscher*, 119 U. S. 407.

The principles of construction in cases of this character are stated by this court in *Choctaw Nation v. The United States*, 119 U. S. 28, where it is said : "The rules to be applied in the present case are those which govern public treaties, which, even in cases of controversies between nations equally independent, are not to be read as rigidly as documents between private persons, governed by a

system of technical law, but in the light of that larger reason which constitutes the spirit of the law of nations."

And another general rule, stated by Vattel and quoted with approval by the same court, and of especial application here, is that: "If a treaty be ambiguous in any part of it, the party who had the power and on whom it is peculiarly incumbent to speak clearly and plainly ought to submit to the construction most unfavorable to him."

Vattel, B. 2, Chap. 17, Sec. 264.

At the outset, it should be remembered that the treaty in question in this case was concluded on the one side by the representatives of an enlightened and powerful nation, skilled in diplomacy, able to express themselves in a written language, and understanding the mode and forms of the creation of all the various and technical estates known to the law; that they brought to the treaty ground an interpreter, especially employed by themselves, through whom to carry on the negotiations; and that the written instrument evidencing the treaty was prepared by them, and in their own language.

The other contracting parties were the illiterate representatives of a weak and dependent people, possessing no written language, totally ignorant of all the forms of legal expression, and whose only knowledge of the written treaty was such as was imparted to them by the interpreter of the other contracting party.

What, then, under the principle stated by Vattel, is the rule applicable in circumstances such as these? The Supreme Court again furnishes the answer: "The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the

treaty, they should be considered as used only in the latter sense." "How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction."

Worcester v. State of Georgia, 6 Peters, 582.

"The parties are not on an equal footing, and that inequality is to be made good by the superior justice which looks only to the substance of the right, without regard to technical rules framed under a system of municipal jurisprudence formulating the rights and obligations of private persons, equally subject to the same laws."

Choctaw Nation v. The United States, 119 U. S. 28.

Doubtful provisions and words of doubtful import in treaties with the Indians are constructed against the United States and resolved in favor of the Indians.

Chickasaws v. The United States, 22 Court of Claims, 248.

See also Grotius, Calvo, and Fiore cited *post*.

We come now to a consideration of the particular stipulation in controversy—"There shall be *set apart* from the tract hereby ceded a reservation of 640 acres near the mouth of Thief River for the Chief 'Moose Dung.'"

It would seem to be conclusively established, particularly in view of the decision in Rutherford v. Greene, 2 Wheat. 197, and the various adjudications upon the Pacific Railroad land grants, that, whatever the nature or extent of the title granted, it was a grant *in presenti*, and in the nature of a "float" upon the selection and location of the definite boundaries of which the title would relate

back to and take effect as of the time of the original grant.

It was to be selected within the limits of the territory ceded by the treaty, it was created by the same act which extinguished the Indian title, and took effect from the same instant of time as the cession to the United States and the relinquishment of the tribal right of occupancy of the ceded country.

The term used to express the grant was "set apart"—a "reservation," "for the Chief Moose Dung," and the essential inquiry in the construction of the grant is as to the meaning of these words in the connection in which they appear.

Bouvier, in defining a *reservation*, says that it "is the creation of a right or interest which has no prior existence as such in a thing or part of a thing granted, by means of a clause inserted by the grantor in the instrument of conveyance; a *reservation* is distinguished from an *exception* in that it is of a *new right* or interest." (Law Dict. 582.)

Aside from its frequent application in the designation of public and Indian tribal reservations, the word "reservation" is one of common use in the grant of lands to individuals by treaty stipulation between the Government and the Indian tribes, where it has been used as a correlative equivalent and in the same connection with nearly every legal phrase and expression conveying title to land.

In many of these cases, by some further provision of the treaty, grants or patents were provided for, and that fact might be urged to distinguish them from the present, where only the words grant or conveyance are those under consideration, no further act or thing being agreed to be done.

The use of the word "reservation," however, so soon became understood as equivalent to and synonymous with the word "grant" in its application in these instances, that it early received that judicial interpretation, and in a case similar to the present (in that no further grant or evidence of title was provided for), decided in the Supreme Court of Mississippi, it is said: "The term 'reservation' was equivalent to an absolute grant. The title passed as effectually as if a grant had been executed. In this case the treaty has not contemplated a further grant or other evidence of title, showing conclusively that by the terms used it was intended that a perfect title was thereby intended to be secured."

Niles v. Anderson, 5 How. (Miss.) 365.

And in a like case the same court again say: "A perpetual and exclusive right of occupancy is not easily distinguished from a fee; a fee is but an inheritable right to occupy or hold to the exclusion of others."

Newman v. Doe, 4 How. (Miss.) 558.

And each of these cases is cited with approval by the Supreme Court of the United States in the leading case of *Best v. Polk*, 18 Wall. 116, and the reasons were elaborated upon.

"Can it be doubted that it was the intention of both parties to the treaty to clothe the reservee with the full title? If it were not so, there would have been some words of limitation indicating a contrary intention. Instead of this, there is nothing to show that a further grant or additional evidence of title was contemplated. Nor was this necessary, for the treaty proceeded on the theory that a grant is as valid by a treaty as by an act of Congress, and does not need a patent to perfect it. We conclude, therefore, that the treaty conferred title to these

reservations which were complete when the locations were made to identify them."

Best v. Polk, supra.

To "set apart" has been defined to be synonymous with "allot," and Webster (Internat. Dict., p. 41,) defines an allotment as "anything set apart," and Rapalje & Lawrence (Law Dict.) define "allotment" and "setting apart" as synonymous.

And of "allot" it has been said: "To contend that the word 'allotted,' in reference to the land guaranteed to the Indians in certain treaties, indicated a favor conferred rather than a right acknowledged would, it would seem to me, do injustice to the understanding of the parties."

Worcester v. Georgia, 6 Peters, 582.

The act of Congress of February 26, 1857, commonly called the "Minnesota Enabling Act" granted land to the State for various purposes, among others, for the use and support of the State university, the act in terms is as follows:

"That seventy-two sections of land shall be set apart and reserved for the use and support of a State university."

And it has never been doubted that the title to these university lands was not equally as good and absolute as any other ever granted by act of Congress or otherwise.

No patent is necessary to the validity of such grants.

A patent is only one form of evidence of a grant. It is only issued when provided for by the law or treaty under which the land is granted or disposed of.

"Purchase made at Indian treaties held by authority of the United States have always been held good by the ratification of the treaty, without any patent to the purchasers for the United States."

Mitchell v. The United States, 9 Peters, 747.

"The treaty granted the land, but the location had to be fixed before the grant became operative. After this was done, the estate vested, and the right to it perfected, as much so as if the grant had been directly executed to the reservee."

Best *v.* Polk, *supra*.

"The treaty itself converted the reserved sections into individual property."

Doe *v.* Wilson, 23 Howard, 457.

We contend that by an acceptance of the definition of the word "reservation," as widely diffused as are the estates in land, in creating which it has been so universally used, the term has come to have a signification as well understood in that connection as any technical word of grant known to the common law of conveyancing, and that the parties to the treaty must be held to have understood and adopted that signification when reducing the terms of their agreement to writing.

No restriction, condition, or limitation having been imposed upon the grant, it must be presumed to have been in the contemplation of the parties that it should be in fee simple.

Every estate or interest in land is of some duration. The law has recognized and divided them into various classes—estates in fee simple fee tail, for life, for years, at will, at sufferance, by the courtesy, in dower, in expectancy, reversion, remainder, freeholds of inheritance and not of inheritance. Under the definition of which of all these does this particular estate in question fall?

Can it be under the accepted definition of any except a fee? To do so we must import into the grant words of condition or limitation which do not appear in the written instrument.

The naked words of the grant carried the absolute title

to the land forever, subject to be defeated or surrendered only by the act of the grantee or the operation of law.

We are not confined in our argument, however, to the presumed intention of the parties in the use of language.

Evidence of the highest character and most absolute verity proves beyond the possibility of contradiction that the construction contended for is true.

This treaty was negotiated and concluded between the accredited representatives of the several contracting parties at a joint council or convention regularly constituted for that purpose. The various demands and concessions of the respective parties were the subject of extended debate; minutes of the proceedings of the council were kept and entered in the journal thereof, under its direction, and a report of all thereof made by the representatives of the United States to the Government; and these are relevant to a proper determination of the meaning intended by the language of the instrument.

It becomes the duty of the court, then, to construe this treaty according to the true intention of the parties.

"And when this duty arises the court adopts those general rules applicable in the construction of statutes, contracts, and written instruments generally, in order to effect the purpose and intention of the makers."

United States *v.* Payne, 8 Federal, 892.

The Amiable Isabelle, 6 Wheaton, 1.

U. S. *v.* Percherman, 7 Peters, 83.

North German Lloyds *v.* Hedden, 43 Federal, 20.

In construing doubtful provisions of the Constitution the courts have frequently consulted the debates of the convention by which it was framed, and even the contemporaneous writings of the members.

The journals of Congress and the Congressional Globe or Record have been referred to.

Blake v. National Banks, 23 Wallace, 307.

There can be no distinction in principle between such an application of the rule and one applying it to the inspection of the journal or the proceedings of a joint convention of so solemn a character as that assembled for the arbitrament of the affairs of two nations.

And that this position is alike sound in reason and eminently proper in practice is demonstrated by the fact that the Supreme Court, in the case of *The Choctaws v. The United States*, 119 U. S. 18, 19, 20, considered in evidence, as bearing upon the construction of the treaty involved in that case, all the proceedings leading up to the making of the treaty and the correspondence which had passed for years between the Government and the Indians relative to the claims supposed to have been adjusted by the treaty.

In so doing, this court manifestly applied the principle stated by Vattel (*ante*) and its own declaration in *Choctaw Nation v. United States*, 119 U. S. 98 :

"The rules to be applied in the present case are those which govern public treaties, which even in cases of controversies between nations equally independent are not to be read as rigidly as documents between private persons governed by a system of technical law, but in the light of that larger reason which constitutes the spirit of the law of nations."

The jurists agree upon this principle of construction :

"I do not admit what many writers have held, that the contracts of kings and people are to be interpreted according to the Roman law, except when the Roman law has been accepted as belonging to the law of nations, which is not likely to be presumed."

2 Grotius De Jure Belli et Pacis, C. 16, Section 31.

"The principle which generally prevails in this respect is that a treaty is to be interpreted in favor of that party to the profit of whom the obligation has been subscribed and against him who grants, for the reason that he is to be held as having given without restriction everything of which the nature of the thing given, or of the engagement undertaken, is composed.

"One ought, in order to attain a reconciling construction (*pour arriver à la conciliation*), to investigate the facts and circumstances which have immediately preceded the signature of the convention, to examine the protocols, the *proces-verbaux* or the other writings drawn up by the negotiators, to study the motives or the causes which have produced the treaty (*la raison d'être de l'acte*)."

I Calvo Dict. de Droit Inter. Title Interpretation.

"An examination of the motives which produced the convention and the discussions relative to the stipulations of the several agreements when the *proces-verbaux* of the preparatory labors have been preserved, which preceded the compilation of the treaty, will be an efficacious aid in interpreting the true sense of each stipulation."

2 Fiore Trattato di Diritto Internazionale Pubblico, Cap. VI, Section 1074, page 339.

In this case the appellees introduced in evidence before the examiner (Record, page), the report of the commissioners on the part of the United States, made to the political department of the Government, relating to the circumstances and negotiations of the treaty. (House of Representatives, Executive Documents, First Session Thirty-Eighth Congress, Vol. 3, page 547, No. 6.)

Accompanying and annexed to this report is the journal of the proceedings connected with the negotiations of the treaty, and both were returned and filed in the office of the Commissioner of Indian Affairs.

Appellees also produced and introduced in evidence (Record, pages 122, 123, 124, 125, Exhibit E) a duly certified copy of so much of such report and the journal as have relation to the adoption of Article IX of the treaty and the grant of the land in controversy. (Record, page .)

The fact that a journal of the proceedings was duly, accurately, and truthfully kept, and returned and filed in said office was also proven by the oral testimony of both Gov. Ramsey, one of the commissioners, and Mr. Wheelock, secretary of the commission. (Record, pages 104 to 112.) And these facts are not attempted to be denied. It is also proven and not denied that the portions introduced in evidence contain all the reference to the grant in question appearing in the journal.

The entries were made by a public officer in the discharge of the duties of his office, and are competent evidence of the facts recited.

The accuracy of the "journal" is further attested by the report of the commissioners, which refers thereto as follows: "Accordingly, on Wednesday, the third day after my arrival, we held one first general council, a report of which, as of all subsequent proceedings, carefully prepared by the secretary of the commission, will be found in the annexed journal."

A reference to the journal (Record, page 123) shows that Moose Dung, one of the representatives of the Indians and the grantee of the land in controversy, in the course of a speech delivered in the council, made use of the following language:

"I have taken the mouth of Thieving River as my inheritance—I used to think that was the proper place for me to settle—that it would be an inheritance for my children—where all my children could have enough to live on in the future."

And (Record, page 124) that Mr. Ramsey, in response to a speech of this same Moose Dung in relation to the same lands, said :

"Tell him I don't care anything about the mouth of Thieving River. He can have it if he wants it."

So it is conclusively established that the parties intended, by the use of the words in the treaty, to convey an estate of inheritance, and to grant the *land*.

And again, looking at the article of the treaty in the light of a contract, and adopting "those general rules applicable in the construction of contracts and written instruments generally, in order to effect the purpose and intention of the makers" (U. S. v. Payne *et al.*, *supra*), we find that we are able to bring to our aid in this investigation other and entirely competent and reliable testimony.

"The agreement was one which, if entered into by an individual, a court of chancery would have enforced by compelling the selection of the lands and the conveyance in favor of the reservee; or, in case he had parted with his interest, in favor of his grantees, and the obligation is not less imperative and binding because entered into by the Government."

Crews v. Burcham, 1 Black, 356.

Had this contract been entered into between individuals, and any ambiguity lurked in its terms, or had it failed to express the real agreement of the parties, a court of equity would not have hesitated to have afforded relief.

In behalf of the grantee, either to have reformed and enforced it, or, if attacked in the enjoyment of any right arising under it, to have asserted the real intention and agreement of the parties, by way of defense.

"Generally in this country either party may have an agreement specifically enforced with such corrections as the parol proof may show to be necessary to correct a mistake."

Beach, *Modern Equity Jurisprudence*, Sec. 632.

Or evidence may be received by way of defense to show the real agreement.

Gillespie *v.* Moon, 2 Johns. Ch. 585.

And so enforce the agreement *made*.

Born *v.* Schrenkeisen, 110 N. Y. 59.

And likewise relieve mistake *in use of terms in reducing the agreement to writing*.

Pitcher *v.* Hennessey, 48 N. Y. 415-423.

And the settled weight of authority in courts of equity in this country is that the contract may be enforced to accomplish the real agreement of the parties by including or importing into its written terms, as well as to exclude from it what is improperly included.

Olson *v.* Erickson, 42 Minn. 440.

Popplein *et al.* *v.* Foley, 61 Md. 388, where, upon oral testimony, the words "for 99 years, renewable forever," were inserted in a lease.

But here one of the contracting parties is the United States, and in no direct proceeding instituted by the grantee for the purpose could he obtain relief; it is only when he is disturbed in his rights that he may, as against the

other party, the grantor, the United States, assert the true intent of the contract and invoke the aid of judicial determination in his behalf.

Should he be invaded or disturbed in the enjoyment of his property, or in the exercise of any rights or privileges arising under the contract, by any officer or agent of the Government, or by any person claiming under its grant or authority, he may institute and maintain against such officer or other person any action at law or suit in equity necessary to the protection of his rights, in and about the same, may allege and prove any matter or thing good as against the title claim of the United States.

United States v. Lee, 106 U. S. 196.

And parties and their privies stand in like relation so far as the right to rely on the real terms of the contract is concerned. While neither the Chief Moose Dung nor any party in succession or privity of estate to him could ever have maintained any action or suit against the United States to have enforced the grant, or to quiet his right to the title thereof, nevertheless, when disturbed in his possession or enjoyment by any person claiming under the United States, he could set up any matter good against the title of the United States.

The appellees claim under the sole right of the grantee in the treaty; the appellant claims under the authority of the officers of the Department of the Interior, who assert some such title in the United States as to vest in them the control or disposition of the property set apart under the treaty stipulation, a portion of which is here in controversy; the appellees deny that right and assertion, and maintain that those officers have no more jurisdiction in the premises than as to the private property of any other person.

It follows as a necessary conclusion, therefore, in view of the decision of the Supreme Court in *U. S. v. Lee, supra*, that any matter may be set up or proven in this case which would be good against the title of the United States, or which could be alleged or proven against the Government, were it amenable to suit relative to the construction of written contracts. Greenleaf states the rule to be that "If the language is vague and have divers meanings, parol evidence is admissible of any extrinsic circumstances, tending to show intention."

Evidence, Vol. 1, p. 367.

It should be borne in mind, however, that the appellees insist that the language of the treaty was in itself sufficient to convey a fee, and that it only becomes necessary to look to extrinsic evidence in view of the attitude of the appellant, who seeks to argue out of it some other estate than that conveyed by its plain import or to impress upon it some ambiguity which it does not, in fact, present.

In *McMunn v. Owen*, 2 Dall. 173, it was said that parol evidence was admissible of a contemporaneous parol agreement explanatory of the written contract between the parties.

And again, in *O'Hara v. Hall*, 4 Dall. 340, the court say:

"If the written contract, upon its face, is ambiguous, doubtful, or uncertain, parol evidence is admissible to explain the understanding of the parties."

"Conversations occurring during negotiations, as well as instruments given, being part of the *res gestæ*, are competent to show the nature of the transaction and the parties to be benefited."

Bank v. Kennedy, 17 Wallace, 19.

And in this case the court further say that the belief of one party may be the criterion by which the rights in controversy will be adjusted where that belief was induced by the acts or declarations of the other.

The appellees have introduced oral testimony of several witnesses who were personally present at the negotiation of the treaty, and who heard the request for the land made by the grantee and the response thereto by the commissioners before the treaty was signed or had been reduced to writing.

These were May-dwa-gun-on-ind, or He-that-is-spoken-to, head chief of the Red Lake Indians; the late Pierre Bottineau, guide and interpreter; Robert Fairbanks, trader; Paul H. Beaulieu, the interpreter through whom all the negotiations were conducted; Joseph H. Wheelock, secretary of the commission, and who kept the journal of the proceedings; and ex-Gov. Alex. Ramsey, one of the commissioners on the part of the United States.

May-dwa-gun-on-ind testifies (Record, page 68) that "Mon-si-moh asked for a piece of land on the west side of Thieving River; 'I want that piece of land for myself and also for my children.' The commissioner then said he could have it—'You shall get it,' and I believe he took a piece of paper and wrote it down." And the witness Bottineau testified to the same conversation (Record, page 73); and the witness Fairbanks also (Record, page 98); Mr. Wheelock says (Record, page 104), in response to the question, (36) "You say you remember Thief River being spoken of; in what connection was it spoken of?" (A.) "It was understood that this Chief Moose Dung was to have some land there. He wanted a tract of land there, and it was understood he was to have a tract of land. That was talked about originally. Of course that was a subject of general conversation. Every-

body felt kindly to Moose Dung because he was very efficient and energetic about the treaty. I don't think we could have got along without him, and the people around there—I don't know who now, but pretty nearly everybody were concerned in and about the treaty—and the commissioners talked about this grant of land to this Chief Moose Dung."

And Gov. Ramsey (Record, page 110) says that Moose Dung was a man of great influence; that he was very much impressed with the obligations of the Government to him, and remembers that they made a concession of land to him.

The clearest possible exposition of all the circumstances of the entire transaction is obtained, however, from the testimony of the official interpreter, Mr. Paul H. Beaulieu, a gentleman of the highest proficiency in his profession, and whose abilities are alluded to in the journal of the proceedings (Record, page 123). Mr. Beaulieu testifies (Record, page 102, Q. 36) that Moose Dung "said that he wanted to get a reservation of a section of land at the mouth of Thief River for himself and family to live on, that would be an inheritance for himself and family; that is the word, sir, that he used. Mr. Ramsey said that he would have no objections to giving him that land for himself and family, to which the Indian responded, 'Ho.' That meant all right."

The journal states (Record, page 125) that "at the end of a session of three and a half hours' duration Moose Dung, who has stood for an hour weighing and deliberating on every separate provision of this treaty, asking for this explanation and that modification, appearing to labor under a serious sense of the responsibility he was taking, at last touched the pen which was to affix his vicarious sign-manual to the treaty. He was followed by Broken

Arm, and, one after another, all the chiefs of Red Lake and Pembina ——"

Mr. Beaulieu testifies that Moose Dung at this time asked for an explanation of the article mentioning the land that was to be set apart to him. (Record, page 102, Q. 41.)

" Mon-si-moh (Moose Dung) asked : ' How shall I feel satisfied in my mind that that land shall be mine and my children's forever ? ' Gov. Ramsey replied to him that there was patents issued in them cases. I spoke then, and I said, I can't state that ; there is no such word as ' patent ' in my language. I used something else. I said, ' Te-bain-daus-o-mun-huh-e-gun.' That is the nearest I can come to it—a paper that states that it is this : ' You will own it forever ; ' but that don't convey the true meaning of a patent.' I told him, sir, that that would be a certificate that that land should be his and his children's forever. And then he signed the treaty, and it was signed by the other chiefs." (Record, page 103.)

The Indians were illiterate, and unable to read the written contract ; they were entitled to depend upon the translation made to them by the interpreter ; that was the only means of information at hand to them. Under like circumstances, in a transaction between individuals, the illiterate party would be entitled, in equity, to have the contract carried into effect according to the explanation made to him.

And appellees are in no materially different position here. Entitled to maintain any action, suit, or proceeding, essential to the protection of the grant, which might have been maintained by their predecessor in interest, they have brought their bill, praying for an injunction, and the proceeding is analogous to that of enforcing the specific performance of a contract, by way of injunction, against

its violation. It is the only remedy open to them, and equity must afford a remedy and means of ascertaining the true rights of the parties here as well as in a controversy arising out of a contract between individuals.

"How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction."

Worcester v. Georgia, *supra*.

Equity will give effect to the real agreement of the parties, rather than to the written evidence of it.

Although powerless to reform the written instrument, we may, nevertheless, rely upon the true intention of the makers.

Appellant insists that the effect of the treaty stipulation was simply to vest in Mon-si-moh the *Indian right*.

There is nothing in the stipulation, in terms or by implication, so confining its operation.

It is true that the term "set apart" is frequently used in reserving by treaty a tract of land for the occupancy of a tribe of Indians; but in all such treaties, where the possessory right only is given to the tribe, some words of *limitation* are always used, as that the land is set apart for their *use* or for their *home*.

The cases Godfrey v. Badsley, 2 McLean, 412, and Wheeler v. Me-slug-go-me-sia, 30 Indiana, 402, do not in any way militate against the position which we have already taken.

In the case first cited the court says: "It is also admitted that a mere reservation of the Indian right to a certain part within described boundaries leaves the right reserved as it stood before the cession." And further:

"But on looking into these treaties there will be found in the case of Pierre Moran, and many others, more than a mere reservation of the *Indian right*."

In the case in 30 Indiana the reservation was in favor of a band of Indians. The language used was: "From the cession aforesaid the *Miami tribe* reserve for the band of Me-to-sim-ia the following tract of land"—a reservation created by the *tribe only*, and in no way affecting the ultimate title of the United States.

Mon-si-moh already had the tribal right of occupancy; as a chief he had the power to select any of the Indian country for his exclusive use. (Record, page 61.)

"He buries his dead there and calls it his home" (Record, page 61), and Mon-si-moh, prior to the treaty, had selected the land in controversy for his individual use; he had his gardens there and a fish trap in the river. (Record, page 58.)

In view of these facts, it could not have been the tribal right of occupancy which the Indians *urgently requested* should be set apart to him.

They must have understood that unless the United States relinquished all claim to the old chief's selection, he would be deprived of his home by the general cession of the treaty. The tribal title was to be extinguished and a several and exclusively personal title was to be vested in the chief—"set apart" to him "upon the request of the Indians." It was not *reserved* as a reservation. It was "*ceded* as a reservation" by both parties to the treaty. (See Art. IX.)

A mere exception of this land from the geographical boundaries of the cession without any reference to Mon-si-moh would have accomplished all that is contended for by appellant. This land would have been left in the same condition as the remainder of the unceded lands,

and the chief, in the virtue of his office, could have remained there as long as the tribal right continued.

But the tribal right had been extinguished by the prior provisions of the treaty.

In construing the Pottawatomie treaty the Supreme Court say: "The treaty itself converted the reserved sections into individual property. The Indians, as a nation, reserved no interest in the territory ceded, but, as a part of the consideration for the cession, certain individuals of the nation had conferred upon them portions of the land, to which the United States title was either added or agreed to be added; and it matters not which for the purpose of this controversy for possession."

Doe v. Wilson, 23 Howard, 462.

But whatever may be the technical meaning of the word "reservation," ~~or of the phrase "hereby ceded as a reservation,"~~ taken in connection with the words "set apart," or however it may be used as applied to the lands of the Government devoted to a specific use as military or forest reservations, and of which the Government holds the absolute title, or to lands in the occupancy of the Indian tribes, that this is frequently and commonly used to designate *grants in fee* to individuals, by treaty, can admit of no doubt; while, on the other hand, we have, after diligent search, been unable to find an instance, in all the treaties and cases, where a reservation of less than a fee title has been made by treaty in favor of an individual.

Courts have recourse also to another means, extraneous of the written instrument, as a guide to its interpretation,

and that is by ascertaining what construction, by their acts under it, the parties have placed upon it.

"To get at the intention of the parties in making a treaty, courts may consider the construction the parties to the treaty, and who were to be affected by it, have given it, and what has been their action under it."

U. S. v. Payne, 8 Fed. 883.

It stands as an admitted fact in this case that the land in controversy was, after the death of the original reservee, upon the request of his son, the present Chief Moose Dung, set apart and designated for the heir of the reservee by the proper authority of the United States, thus recognizing and treating the grant as one of an inheritance. The report of the commissioners and the journal of the proceedings of the negotiation of the treaty were all this time in the archives of the Government, and their contents known to the officials of the Department which made the designation, and it was never doubted or suggested otherwise than (and it was held by the Department) that the grant operated to convey an estate of inheritance and vest a fee title in the reservee; and his son, the lessor, was his heir.

II.

That upon the decease of the Chief Moose Dung, the reservee named in the treaty, in 1872, the estate thereby granted descended to and was inherited by his oldest son, the present Chief Moose Dung, appellees' lessor, as heir at law and successor.

The answer of the appellant (Record, page 14) alleges that "said Chief Moose Dung departed this life and left him surviving the Chief Moose Dung, who made and executed this lease to the defendantherein before mentioned, as his oldest son, heir at law and successor."

The definite date of the death of the elder Moose Dung is fixed by the testimony of the witness Leading Feather as the year 1872.

The appellant also introduced in evidence the admission of appellees' solicitor, made at appellant's request, "that the living Chief Mon-si-moh, commonly called Moose Dung, was the eldest son and successor to all rights of his father under the treaty of October 2, 1863, and the son of the Chief Mon-si-moh who signed that treaty." (Record, page 132.)

We might have rested here had not appellant, upon this proposition, in the face of his express stipulation to the contrary, served a motion to be allowed to file a supplemental answer setting up rights claimed to have been acquired by him since the commencement of this suit. This we disputed his right to do, and, having had no opportunity to take testimony upon the issue thus attempted to be presented, we wish to call the attention of the court to some facts appearing in the record, and undisputed, as furnishing conclusive reasons why the motion for leave to file the supplemental pleading was properly

denied, and these other than such as might be urged as mere matters of practice, but going at once to the question of the legal rights involved.

In the first place, the pretended instrument of lease introduced as the foundation of appellant's new right does not recite any new or moving consideration as moving from the appellant than the performance, on his part, of conditions which he was already legally bound to perform, and, the consideration being expressed, we are not at liberty to presume another or different one; it is a *nudum pactum*.

Next, it appears to be made by persons claiming as joint tenants or tenants in common with the original lessor.

And appellant claims in their right, and *now* at least, at the time of procuring this additional lease he surely must have had actual knowledge of our rights or claims in the premises, for he can hardly be heard to allege that he was at that time ignorant of our possession and prior lease.

The lease which he attempts to set up by way of supplemental answer does not appear to have been approved by the Department of the Interior, and we must be led to believe that he has abandoned his contention that the acts or contracts of an Indian must be so approved.

Supposing, for the sake of argument, that appellees had a lease from one only of several tenants in common, would the other tenants, or their representative, or successor in interest or estate, be entitled to maintain an action against the lessee from the first, without first giving notice to quit, or disaffirming the act of their co-tenant, who must be presumed to have acted in behalf of all?

We call the attention of the court to the fact that

although this lease bears date four days previous to the examination of the lessors named therein, the appellant asked of them no question relative to its making, and that such fact was not disclosed until several days thereafter, and when we had no opportunity to examine into the circumstances of its execution. (Record, page 281 and 166.)

It has been well established that a lease from one tenant in common and the payment of rent to him was a bar to an action for use and occupation at the suit of the other tenants.

Decker v. Livingstone, 15 Johns. 479.

And that such a lease operates to give the right of possession.

Rising v. Standard, 17 Mass. 282.

And that the lessee is entitled to a notice to quit from the other tenants, as a disavowal and termination of the rights under the lease.

Ord v. Chester, 18 Cal. (Baldwin, J.)

Assuming that appellees' lessor was a tenant in common, he was not only such a tenant but a tenant in common in possession, and so long as he was suffered to retain control of the common property his acts in relation thereto would bind his co-tenants, and he has received the rent for the current year, and his co-tenants are bound thereby at least.

Moose Dung is shown by the testimony of every witness who testified on that point to have been in the actual and exclusive possession of the premises in controversy

for many years—at least since the date of the allotment in 1879.

But appellees assert that he was the sole owner of the property. That even conceding that the other persons named in said lease were the children or grandchildren of the elder chief, they would still not be entitled to inherit any interest in this estate.

It appears in evidence that the old chief had a first wife, the mother of the present chief, and that while she was still living with him he took another, by whom he had children, and through whom some of said alleged co-tenants claim to be descended, it not appearing distinctly whether two or four of the present claimants. (Record, page 225.)

The defendant does not inform us to what rights he claims through this second or bigamous alliance of the old chief, as he introduces no evidence of any Indian custom or law sanctioning such a relation.

However that may be, we are brought finally to the main question, and that is this: that, even conceding these alleged co-tenants to be descended from said ancestor, are they heirs to this property?

The witness John George Morrison (Record, pages 60, 61-62) testifies that he is a member of the Chippewa tribe, and was raised among them; that he knows the laws, customs, and usages of the Chippewa Nation in regard to the inheritance of real property; that, by the law of descent among those Indians, at the death of a chief his eldest son would be entitled to succeed to all his property and estate as well as to the office of chief; that Moose Dung was a hereditary chief of the tribe, and that upon his death the present chief was entitled to and did succeed to all of his property, including the property in controversy.

And Moose Dung himself, called in behalf of the appellant, testified (Record, pages 228, 229, Qs. 25, 26, 27, 28, 31) that he was the eldest son of the first wife; that the children of the second wife were not entitled to the same rights as those of the first; that he succeeded his father as chief by reason of being the eldest son of the first wife; that by the laws, customs, and usages of the tribe he was entitled to so succeed; that he also, and by the same right, inherited the property in controversy, and that it is his, and that his father left it to him at his death, and to no one else.

And none of this testimony was contradicted, or attempted to be, by the appellant. What, then, are the rights of these other alleged co-tenants?

The appellant claims that they have been found to be the heirs of the old chief, by the Department of the Interior.

But here he is met by the decision in the case of *Richardsville v. Thorp*, 28 Federal, 52, where the court, in a parallel case, say: "The Secretary of the Interior, while competent to adjudicate on the facts, has no authority to establish a rule of evidence or of *inheritance* binding on the courts." So it is for the court to determine whether this property descended according to the law of the State of Minnesota or the laws, customs, and usages of the Chippewas.

In the early case of *Dole v. Irish*, 2 Barb. 639, which was an application for an injunction to restrain probate of the estate of an Indian, the court says: "I am also of the opinion that the distribution of Indian property, according to their customs passes, a good title which our courts will not disturb." Appellant has laid great stress upon the fact that the former chief in his lifetime and these living descendants have always been tribal Indians,

and we willingly concede that in 1872 and at the time of his death they were so.

"If the tribal organization of the Shawnees is preserved intact and recognized by the political department of the Government as existing, then they are 'a people distinct from others,' capable of making treaties, separated from the jurisdiction of Kansas, and to be governed exclusively by the Government of the Union."

Kansas Indians, 5 Wallace, 755.

"Conferring rights and privileges on these Indians cannot affect their situation, which can only be changed by treaty stipulation, or a voluntary abandonment of their tribal organization. As long as the United States recognizes their national character, they are under the protection of treaties and the laws of Congress, and their property is withdrawn from the operation of State laws."

The Kansas Indians, 5 Wall. 737.

In another case the deceased was the patentee of an allotment lying in the midst of white settlements in the county of Wyandotte, Kansas, but was still a member of the Indian tribe. Mr. Justice Brewer, sitting in the Supreme Court of Kansas, held that, "It appearing that the tribal organization was still recognized by the political department of the United States Government, the descent is cast not under the State law, but in accordance with the law of the tribe."

Brown v. Steele, 23 Kansas, 473.

The Supreme Court of the State of Minnesota has expressly disavowed the application of the laws of that State in the probate of the estate of a deceased tribal Indian owning land in fee. It prohibited the probate court from entertaining jurisdiction of the proceeding. They say that the individual real property of a tribal Indian,

acquired from the Government, is not within the civil jurisdiction of the State.

U. S. *ex rel.* Davis *v.* Shanks, 15 Minn. 369.

And the same court, in a well-considered opinion by Mr. Justice Mitchell, say :

"There is no decision of the federal courts that a State can, even in the absence of a restriction in a treaty, or in the act admitting the State into the Union, extend its laws, either criminal or civil, over tribal Indians residing, under the care of the General Government, upon a reservation set apart by it for that purpose."

State *v.* Campbell, 53 Minn. 357.

The real property of an individual Indian is just as much protected from the operation of State laws as is that of the tribe. If the title has never vested in a white man so as to lose its character of *Indian property in lands*, it retains its original character and exemption, although owned in severalty by an individual Indian.

This is the doctrine of Chancellor Kent and is referred to with approval by the Circuit Court of the United States for the District of Indiana in *Wau-pe-man-qua v. Aldrich*, *infra*.

But another and higher guaranty operates in this instance.

The provisions of the ordinance of 1787 for the government of the territory northwest of the river Ohio were, by the act of April 20, 1836, creating the Territory of Wisconsin, extended to so much of the Louisiana purchase as is comprised within the present area of Minnesota and the Dakotas. This provides as follows : "The

utmost good faith shall always be observed towards the Indians ; thier lands and property shall never be taken from them without their consent, and in their property rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress" etc.

Land granted to an Indian by treaty, in severalty, was, under the provisions of this ordinance, held not to be subject to the operation of State laws, in—

Wau-pe-man-qua v. Aldrich, 28 Federal R. 498.

Mr. Justice Harlan concurred ; and this decision would seem to preclude the necessity for a further citation of authorities upon the proposition contended for.

III.

That the selection of the lands in controversy by the heir and successor of the original reservee, and the designation thereof, in 1879, by the officers of the Department of the Interior, operated to identify and permanently establish the location and boundaries, and finally effectuate and complete the terms of the grant.

The appellant alleges (Record, page 14) in his answer, " That afterwards the Government of the United States,

through its proper officers, set apart and designated said lot one (1) in section thirty-four (34), among other lands, as the reservation selected for said elder Chief Moose Dung in said treaty."

It is also admitted that the ten-foot strip in controversy and said lot one (1) in said section thirty-four (34) is a part of the land so selected.

The facts in the record as to the selection are shown by the correspondence of the Department of the Interior. (Record, pages 125 to 129.)

"The treaty granted the land, but the location had to be fixed before the grant became operative. After this was done, the estate vested, and the right to it perfected, as much so as if the grant had been directly executed to the reservee."

Best v. Polk, *supra*.

IV.

That, in 1891, at the time of the making of appellees' lease, the lessor therein, the present Chief Moose Dung, possessed the inherent right and full power and qualification to make and execute any contract or conveyance in relation to or disposing of the lands in controversy.

We now arrive at the consideration of the necessity or effect of the so-called *approval* of the Secretary of the Interior of appellants' alleged lease.

The assumed necessity for any action on the part of the Government in the premises, or for any approval of a lease or other conveyance made of the land in controversy by the Indian, Moose Dung, the lessor, can only be predicated on one or the other of two assumptions—the first, that the United States still holds the fee title to the land, and that the Indian has not an estate therein of sufficient duration or extent on which to found a lease for a term of years; and the second, that, even conceding that the Indian owns the fee of the land or an estate therein of sufficient duration or extent to support a lease, he has not legal capacity to make the contract in relation thereto, for that, being an Indian, he is thereby an incompetent person, and his acts and contracts and the disposition of his property are under the control and supervision of the officers in charge of Indian affairs of the Government of the United States.

The first of these assumptions we have demonstrated to be erroneous. The question as to the second is :

Was Moose Dung *sui juris* when he made appellees' lease? He is admittedly a man of some sixty years of age, in the full possession of all his faculties, and not alleged to be under disability other than that he is chief of a band of Chippewa Indians, and that he participates in the payments of annuities which are derived by the tribe as the purchase money of cessions of land to the Government.

The Supreme Court, in the case of *Doe v. Wilson*, 23 Howard, 462, say :

“ Although the Government alone can purchase lands from the Indian nations, it does not follow that when the

rights of the nation are extinguished, an individual of the nation who takes as private owner, cannot sell his interest. The Indian title is property and alienable, unless the treaty has prohibited its sale."

In the absence of a regulation of law to the contrary, an Indian has the same inherent right as any other person to sell what he owns.

And all statutes and treaty stipulations restraining the disposal of Indian property are *disabling* acts. And all enabling acts simply permit the beneficial disposition of some interest less than an absolute ownership.

And in the absence of enabling or disabling acts alike, a conveyance by an Indian of an allotment to which he holds the equitable title (under the act of March 3, 1843, 5 U. S. Stat. 645) is good.

Quinby v. Denny, 18 Wis. 510.

An alien Chinese and an American Indian have each an equal right to enter into any contract, unless expressly prohibited by law.

Sho v. Julius, 1 Wash. Ter. 325.

And he may also sell what he owns.

Crews v. Burcham, 1 Black, 352.

And see—

Prentiss v. Stearns, 113 U. S. 435.

But, moreover, Moose Dung, in addition to being a man, is a citizen of the United States and of the State of Minnesota.

The act of Congress of February 8, 1887, section 6,

vol. 24 Stat. at Large, page 390, commonly known as the Indian Allotment Act, provides in terms as follows :

" And every Indian born within the territorial limits of the United States, to whom allotments shall have been made under the provisions of this act, or under any law or treaty, is hereby declared to be a citizen of the United States, whether said Indian had been or not by birth or otherwise a member of any tribe of Indians within the territorial limits of the United States, without in any manner impairing or otherwise affecting the rights of any such Indian to tribal or other property."

The present Chief Moose Dung is shown to have been born at Red Lake, in what is now the State of Minnesota, and to be a member of the Chippewa tribe of Indians.

The *allotment* was the *setting apart* and designating to him of the land granted by the treaty.

And the fact that he still appears upon the annuity rolls of the Government, dwelt upon at length by appellant, is within the express exception of the statute.

And so Moose Dung was not a person *sui juris*, but a citizen, and as such was a voter in Minnesota; and his contracts are as far removed from the control and supervision of the officers of the United States as are those of any other person or citizen.

The treaty agreements cited by appellant showing that the Chippewa Indians have acknowledged themselves to be under the protection of the United States refer only to the political relations of the Indian nations to the Government; they were entered into at a time when large domains now included in the territorial limits of the United States were owned or claimed by foreign nations, and when

there was danger of the Indians allying themselves with those nations, or acknowledging allegiance to them.

In colonial times and for some years after the formation of our Government the various Indian tribes in this country had the power to alienate their tribal title of occupancy, but they could not create in their grantee, by conveyance, a fee title without the consent of the Government. They could, however, transfer an absolute title by securing the consent of the Government to *their* conveyance of the land. The tribes would still have power to transfer their possessory right of occupancy without the consent of the Government but for statutory enactments prohibiting such sales.

"Sales made by the Indians transferred the kind of rights which they possessed."

Mitchell v. U. S., 9 Peters, 711.

"The person who purchases land from the Indians, within their territory, incorporates himself with them, so far as respects the property purchased; holds their title under their protection and subject to their laws. If they annul the grant, we know of no tribunal which can revive and set aside the proceeding."

Johnson v. McIntosh, 8 Wheaton, 586.

But, by statute, the Indian nations and tribes have been, at least since the year 1790, prohibited from disposing of even their *tribal* title.

"No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian *nation* or *tribe* of Indians, shall be of any validity in law or equity unless the same be made by treaty or convention entered into pursuant to the Constitution."

U. S. Rev. Stat., Sec. 2116, p. 369, Chap. 3.

This provision was taken, *verbatim*, from sec. 12 of the

trade and intercourse act of June 30, 1834, 4 Stat. 730. That this act has no application to individual Indians holding lands in severalty, and that the Congress intended that there should be no statute or law placing Indians, generally, under legal disability to contract with respect to their individual real property, clearly appears from an examination of the several acts of Congress regulating trade and intercourse with the Indians preceding the act of 1834.

The act of July 22, 1890, provided that "no sale of lands made by any *Indians*, or any nation or tribe of Indians," should be valid.

Stat. at Large, p. 137.

The act of March 1, 1793, Sec. 12, provided that "no purchase, grant, lease, or other conveyance of lands, or of any title or *claim* thereto, from any *Indian*, or nation or tribe of Indians," should be of any validity in law or equity.

1 Stat. at Large, p. 472.

By Sec. 12 of the act of May 19, 1796 (1 Stat. 469), and by Sec. 12 of the act of March 3, 1779 (1 Stat. 743), that provision last above quoted was re-enacted.

These were followed by the act of March 30, 1802 (2 Stat. 139), containing the same provision, and this latter statute remained in force for thirty-two years, and until *expressly repealed* by the last trade and intercourse act which has been passed—the act of 1834—from which was taken section 2116 of the Revised Statutes, above quoted, the present law.

It will be seen, therefore, that from at least the year 1790 until 1834 no valid sale, lease, or conveyance of land could be made by any *Indian*; that by the repeal contained in the

act of 1834 *supra* the policy of the Government with regard to the land of individual Indians was entirely changed, the inhibition being removed from individuals but continued as to tribes and tribal lands. Since 1834 there has been no change in the law on this subject, and since then the practice has been, in granting or reserving lands to individual Indians in severalty, to limit the grantees' power of disposition, if a restraint were desired, by *express provision* to that effect inserted in the treaty or act whereby the grant was made; and the fact that these special restrictions exist in individual cases is ample proof that since 1834 there has been in existence no general statute or law placing individual Indians, as a class, under legal disability to dispose of any interest in land possessed by them in severalty. There could be no better evidence of the intention of Congress to permit individual Indians to dispose of any title or interest in land held by them in severalty than the express repeal in 1834 of the only statute which prohibited them from so doing.

The allotment act of 1887 provides that the allottees shall not sell their allotments for twenty-five years.

Act of Feb. 8, 1887, 24 Stat., p. 388.

The Indian Homestead Act prevents the Indian homesteader from disposing of his land for five years.

Act March 3, 1875, 18 Stat., p. 402.

Taylor *v.* Brown, 147 U. S., p. 640.

In some cases the Indian is permitted to sell his land only with the consent of the President, as in *Pickering v. Lamox*, 145 U. S. 310; or with the consent of the Secretary of the Interior, as in *Pennock v. Commissioners*, 103 U. S. 44.

Why these *disabling* acts if the Indian has no legal capacity to contract regarding his own property?

The act of *allotting* the land to the present chief conferred upon him all the rights and privileges of citizenship. This was done in the year 1879.

An Indian may maintain tribal relations and yet be a citizen of the United States, and prior to the act of February 8, 1887 (the allotment act), an Indian might sever his tribal relations, and adopt the habits of civilized life, and yet occupy the *status* of a tribal Indian.

Elk v. Wilkins, 112 U. S. 194.

He remains a tribal Indian until naturalized by treaty provision or act of Congress. *Id.*

He cannot be naturalized under the general naturalization laws. *Id.*

The test, then, is not whether an Indian is an annuitant of the Government, or shares in the proceeds of tribal funds, or maintains tribal relations, in determining the question of whether or not he is a tribal Indian or a citizen of the United States.

The test is whether or not he has been naturalized under some treaty provision or special act of Congress.

The intention must have been to naturalize allottees under treaties made prior to the passage of the act of 1887, because no treaties have been made with the Indian tribes for over twenty years, in obedience to the prohibition of the making thereof contained in the act of March 3, 1871.

Rev. Stat., Sec. 2079.

The purpose of the act of 1887 was undoubtedly to make a citizen of every Indian in the United States who then held, or should thereafter acquire, under any law or treaty, land in severalty. Manifestly it was considered by Congress that *citizenship should accompany indi-*

vidual ownership of land by Indians ; that they should exercise and enjoy the rights and bear the burdens of citizenship, to the end that tribes might finally be broken up, individuals placed on distinct tracts of land, and the Indians follow the modes, habits, and pursuits of the white men.

There are no grades or classes of citizenship in the United States. All stand on equal footing before the law. While Congress has power to confer citizenship, or prescribe the mode whereby the status of citizenship may be acquired, it has no power to take away the rights, privileges, and immunities of the citizen when once they are acquired.

These are regulated by the Constitution, not by Congress.

Osborn *v.* U. S. Bank, 9 Wheaton, 738-827.

So that Private Resolution No. 5, under which appellant claims, is effective neither for the purpose of construing the article of the treaty nor to abridge the rights of the Indian to contract in relation to the land.

V.

That the appellees' demise is a good, valid, and binding lease of the lands in controversy, duly executed by said present Chief Moose Dung, and accepted by the appellees, who have, upon their part, performed all the terms and conditions thereof, and who entered into, and ever since the date thereof have been in, the actual possession and occupancy of the lands in controversy thereunder.

The lease from Moose Dung to appellees was made November 7, 1891, at Red Lake Falls, Polk county, Minnesota; was duly executed and acknowledged by the lessor, accepted by the lessees, who entered into possession thereunder, and have paid all rentals arising thereby, and was, on the 10th day of November, 1891, duly recorded in the office of the register of deeds in and for the county where the land lies. (Record, page 120.)

Appellees introduced in evidence the record of the lease, proven by the testimony of the register of deeds (Record, page 97), and a certified copy thereof (Record, pages 119-120), each of which is, by the statute of Minnesota, made *primary evidence* of the execution of the instrument; and also the original lease (Record, page 119); and the fact that the lease was recorded as alleged is admitted by the answer. (Record, page 10.)

The appellee Patrick Meehan testifies (Record, pages 21, 22, 23, 24), in regard to the making of the lease, that he agreed with Moose Dung upon the terms; that Moose Dung was at that time living on the land and said that he owned it; that appellees accepted the lease and caused the same to be recorded, and, the same year that it was made, entered into possession of the premises under it and remained continuously in the possession and occupancy thereof ever since that time.

That Moose Dung at all times knew of their possession and occupancy and of all their acts in and about the premises, and always acquiesced therein, and that appellees paid all the rent reserved by the lease and that the lessor, Moose Dung, always received the same.

This lease was witnessed by one Curtis B. Wall; and the acknowledgment thereto taken by Theo. LaBissoniers, a notary public. The appellant called each of these for examination as to the circumstances attending the making of the lease.

The witness Wells acted as interpreter between Moose Dung and the representative of the appellees, and the notary public, at the time the lease was executed; he stated that he was a native of the State of Ohio, and could read the English language and the written lease, and had lived among the Chippewa Indians for fifteen years, and for many years in the same house with one, and had done business with the Indians and had acted as interpreter. (Record, page 207-210.) Appellant's solicitor having shown the witness a copy of appellees' lease, asked him (Q. 21, page 208), "Can you translate that into the Chippewa language literally?" To which the witness answered: "Well, word for word, I don't know as I have got anything—but I can read it over, and did at the time, and explained it to Moose Dung so that he certainly understood it; he seemed to understand." And, upon cross-examination upon the same point, the witness testified, "I meant to explain it to him as well as I could." Being asked the question (x-Q. 6), that it was a lease of ten feet of shore rights up that river, "Didn't you tell him that this would give them the right to go on ten feet of his land up there, so that they could string booms in the river?" he answered: "That I meant to tell him; yes, sir." x-Q. 7. "And that is what you did tell him, as near

as you could come to it in the Chippewa language?" A. "Yes, sir." x-Q. 8. "And you told him how much money they were going to pay him, in the lease for that right that they got there, didn't you?" A. "Yes; the amount mentioned in the lease." x-Q. 9. "And you told him how many years or how long it would run in the future; that they would have a right to do that there, did you not?" A. "Yes, sir." x-Q. 10. "And you explained to him how much shore from the water up that they wanted to use with the water right, didn't you, under the lease?" A. "Ten feet; yes." x-Q. 12. "And that it commenced way down the Red Lake River as far as that first land went, and run up along the river, up along the whole shore line of his land there; told him what it was, the ten feet, didn't you?" A. "*Ten feet; as far as his land went up and down.*" x-Q. 20. "And after you explained to him in Chippewa, as near as it was possible for you to explain the meaning of this instrument, he said he was satisfied with it, didn't he?" A. "Yes, he seemed to be satisfied with it at the time."

And then he says that Moose Dung touched the pen and made his mark to the lease, and acknowledged it, and the notary took the acknowledgment, and he signed as a witness.

And he further said that he understood what Moose Dung said when he talked to him, all the time.

And the testimony of the witness Theo. LaBissoniere, the notary who took the acknowledgment to the appellees' lease, being called in behalf of the appellant, is equally as interesting (Record, pages 231-232). He states that he read the lease aloud, and that Wells asked the chief if he understood it. And (x-Q. 11) that he took the acknowledgment with all the formality that was required of him as a notary according to law, to the best of his knowledge.

It is difficult to perceive what advantage the testimony of these two witnesses was to the appellant, unless he wished to effectually prove the *bona fides* of the lease.

Further than this, the testimony of Moose Dung himself, when called on behalf of the appellant (Record, pages 227-228), shows conclusively that he fully understood the terms and signification of the lease when he made it. He said (x-Q. 2-3) that at the time he made the lease he was living on the land, and he owned it. And (x-Q. 6) that the rent was paid for the current year, and that he received all the rent due and \$100 in advance, and (x-Q. 7) that he never told either of the appellees that he was dissatisfied or wanted to terminate the lease. And (x-Q. 10) that he was told that the lease was for the shore right of the property here in controversy, and (x-Q. 12) that he knew the amount of the rent per year, and that he touched the pen and made his mark to the paper (x-Q. 16), that "the interpreter was there also; and there was another man that was there that endorsed the papers up."

Would it be possible for appellees to show more conclusively that the lease was entered in good faith, on their part, in the full knowledge and understanding of its terms by the lessor? And, appellees having accepted the same and entered under it, there would seem to be no necessity for argument upon the proposition that it remains the valid and binding agreement of the parties.

See *Camp v. Camp*, 5 Conn. 300.

Hinsdale v. Humphrey, 15 Conn. 431.

And here, in conclusion, it is proper to remark that the pretended suit of *Mon-si-moh v. the appellees* herein has long since been dismissed by the court wherein it was brought, it having been conclusively shown that it was commenced by appellant's counsel herein without any authority from the Indian.

VI.

That at all times during the negotiations alleged to have been had by appellant, respecting the lands in controversy, he had notice of the existence of appellees' prior lease thereof, and knowledge of their possession and occupancy of the premises thereunder.

The appellees' lease was duly recorded, according to the registry laws of the State of Minnesota, for more than three years before the date of appellant's alleged lease.

The alleged lease of appellant, under which he claims herein, bears date July 20, 1894, and purports to have been executed by Moose Dung on that day and by the appellant on the 24th day of the same month, and to have been modified and approved by the Assistant Secretary of the Interior on the 13th day of November of the same year, and also bears two further pretended acceptances, one by the appellant, dated November 16, 1894, and one by Moose Dung, dated December 5, 1894; and it is alleged in the answer (Record, page 15) that the same was finally confirmed and approved by the Secretary of the Interior on the 27th day of December, following. And it

is especially by reason of this alleged action of the Department of the Interior that appellant claims a right to the possession of the premises. All of these acts, then, must constitute parts of the same transaction, and, according to appellant's own contention, the last thereof was necessary to complete the same and vest in him a right of entry and possession of the land.

The appellees claim that, in addition to the notice which appellant had of the appellees' prior lease by the record thereof, he also had actual notice of the same.

That he had this actual notice first before the very inception of his transaction in regard to the lease under which he claims, and that he had actual notice during all the time in which he was carrying on said negotiations.

That this notice was communicated to him not alone by the fact that appellees were in the actual possession of the premises in controversy, but that he was, before said 20th day of July, told of the same and of appellees' rights and lease, and was frequently thereafter, during said negotiations, told the same, and that he saw the said lease in fact and by personal knowledge was well aware of its existence, and that he is chargeable not only with notice, but with bad faith in all his conduct during the entire transaction.

In addition to the testimony of the appellee Patrick Meehan, heretofore referred to, James Meehan testified that the appellees occupied the land in the fall of 1891 by hauling and storing oak piling out on the shore, and that in the winter of 1892 they drove the piling for their booms in the river, appurtenant to the ten-foot strip, and that they used it as a storage for boom timber and the other ordinary uses to which it was adapted as forming one shore of its mill-pond from that time forward; and that on the 14th day of December, 1894, they erected a house

on the strip and inclosed it with a fence, and that ever since that time the house had been occupied by men in their employ. He also testified (Record, pages 55, 56) that the piling along the shore, driven by appellees under their lease, was driven in the ordinary manner usual with lumbermen all over the country, and that he had been in the lumber business for thirty years and knew the general manner of construction of booms and driving of piling by lumbermen exercising shore rights, and that these were constructed and driven in that manner; and that a lumberman seeing piling in a river in such a position as this would naturally look to the ownership of the shore, as they would to him indicate that the person using the river must possess the shore rights.

James Meehan, Jr., who is engaged in the operation of appellees' mill at Thief River, corroborated this testimony and said that the river at that point was about 250 feet wide and that these piles were driven about an average of 30 feet from the shore. (Record, page 93-94.)

And the appellant himself testified (Record, page 132-140, Q. 19) that the piles were the same distance from the shore; and in answer to x-Q. 16 he admits that in July, 1894, and before he had procured his lease he had seen the property in controversy, and these piles in the river, and knew what they were there for. And in answer to x-Q. 52, 53, 54, and 55, he testified that he knew the customs of lumbermen in the construction and operation of piling and booms in rivers, and that in taking his lease he had to have the river or it would be of no value to him; that he was looking for his share of the river, the boomage of half of the river; and he also testified that in order to have obtained the half of the river it would have been necessary to remove the appellees' piling and booms some fifty or seventy-five feet. Right here it is pertinent to

inquire why, if he had no suggestion of appellees' right, was he so particular to incorporate the provision in his lease regarding the shore rights and privileges? Mr. Jones also testified that the entire matter of the negotiation of his lease was left to his solicitor, Mr. Kellogg. (Record, page 236, Q. 3.)

Mr. Kellogg, being examined in behalf of the appellant (Record, page 144), testified that before he obtained the lease to Jones from Moose Dung, he went upon the land in controversy (x-Q. 42), and (x-Q. 56) said: "I was considering lot one with reference to the location of a mill there, and the piling attracted my attention, and I inquired for what purposes they were there, and who put them there, and how they were used," and said (x-Q. 60) that he was informed that they were driven by the Meehans.

And the answer alleges that the piles were *not nearer* than 30 feet to the shore and were at least 30 feet apart.

The witness Willie (Record, page 85) testified that he told the defendant in person at Thief River Falls, as early as the 4th day of July, 1894, while looking over the property, that the Meehans claimed shore rights there.

The witnesses to the appellant's lease, Knox and Spear, each had knowledge of the existence of the appellees' prior lease at the time they witnessed the execution of appellant's lease, July 20, 1894. The witness Peterson testified (Record, page 96) that early in the spring of that year, in a conversation with Moose Dung and Knox relative to leasing the land, Moose Dung told Knox of the appellees' lease.

Further than this, the notary public who took the acknowledgment of the appellant's lease, W. R. Spears, called in behalf of the appellant (Record, pages 197-199-200), testified (Qs. 28-29) that Moose Dung, in answer to a question by Mr. Kellogg before the lease was signed, said that he had made another lease of the land.

And (x-Q. 27) that he (Spears) knew the Meehans had a lease of the shore rights, and that it was commonly understood at the time the appellant's lease was made that the claims of appellant and appellees conflicted. (x-Q. 61.) He also testified that he knew that the appellees were occupying the land under Moose Dung, and he said (x-Q. 65, &c.) that he told Kellogg that he (Spears) did not want to be mixed up in the conflict between Jones and Meehan.

And the witness Kellogg admitted (Record, pages 141-144, x-Q. 36) that he saw the lease under which appellees claim in the office of the Commissioner of Indian Affairs in Washington before the appellant's lease was approved by the Assistant Secretary of the Interior. And Mr. Patrick Meehan testified that he told both Kellogg and Jones, at Thief River Falls, in September, 1894, that he had a lease of the shore, and claimed the shore right along lot one. (Record, p. 116, Q. 5.)

If anything further were necessary to demonstrate the fact that appellees at all times asserted their rights in the premises, and, whenever either legally or morally bound so to do, gave all parties notice of the existence of their prior lease, it is found in the allegation contained in the answer (Record, page 15) that "from the time he (appellant) first entered into negotiations for said lease appellees have constantly and continually endeavored to prevent and have fought this defendant in his purpose and undertaking."

Can it be doubted that the appellant had knowledge of the rights of appellees, or that appellees have asserted those rights whenever called upon to do so?

Appellant lays great stress upon the facts of the approval of his lease by the Secretary of the Interior. He states that the lease to appellees was disapproved by the

same officer. This last statement is absolutely erroneous, and is not borne out by a syllable of testimony in the entire record. On the contrary, it is expressly denied, and the contrary is shown by the letter from the acting Secretary to the Commissioner of Indian Affairs, introduced in evidence by the appellant. (Record, page 269, 270, 271, 272.) The Secretary says: "I have considered the question of the approval of two leases executed by Mon-si-moh, or Moose Dung, a Chippewa Indian, one to Ray W. Jones, dated July 20, 1894, and the other to P. & J. Meehan, dated August 10, 1894" (not the lease under which appellees claim the land in controversy). "*The point is raised in behalf of Mr. Jones that, because of the character of Moose Dung's title, this Department has no jurisdiction over the matter, to approve or disapprove his lease. In view of the fact that Congress has given this Department authority in the premises, and that Mr. Jones has invoked its action, this point cannot be sustained.*" (What a change of heart.)

The Secretary then says that the joint resolution referred to is sufficient to *obviate* the objections to the Jones lease that it was not executed in the form required of leases of Indian allotments, but that these objections, not being *thus obviated* as to the Meehan lease of August 10, 1894, are sufficient to prevent its approval. He further says: "A question has arisen as to whether the lessor is in fact the sole heir and representative of his father, the elder Mon-si-moh; information received since the matter has been under consideration here is to the effect that he *has one sister. This man has, however, been in exclusive possession and control of the land since his father's death.*"

This copy was certified January 10, 1895 (Record, page 269), and was immediately used by appellant on a motion

to dissolve the injunction *pendente lite*, issued January 9, 1895 (Record, page 284), and introduced in evidence before the examiner June 8, 1895. (Record, page 131.)

It shows of itself the variety of inconsistent positions attempted to be occupied by appellant, during the various stages of this litigation, upon the character of the title derived under the treaty, the jurisdiction of the Department over the acts of the Indian, and the knowledge of appellant upon the question of the heirship and his lack of all diligence and propriety in making the motion for leave to file the supplemental answer, and the actual possession and occupancy of the land by the Meehans.

Returning to the proposition under discussion, the *bona fides* of the appellant, it would seem that the point raised by appellant, that the record of appellees' lease was not legal notice of its existence because made, as he claims, by a tribal Indian, is hardly worthy of notice.

The recording acts are for the benefit and protection, not of grantors, vendors, and lessors, but of grantees, vendees, and lessees; and while the question of the effect of the record as legal notice might arise as between tribal Indian purchasers or lessees, over whom the civil jurisdiction of the State may not extend, it certainly cannot arise as between citizens of the United States claiming conflicting interests in land in the State. The civil jurisdiction of the State certainly extended over both parties to this controversy at the time they made their respective contracts with the Indian within the limits of the State, and it likewise must have extended to any property interests which they may have had or claimed, or may have or claim, within the State. If any title to, or any right

or estate in, this land passed from the Indian by virtue of the leases, that title, right, or estate must be subject to the operation of State laws while held by persons subject to its jurisdiction. The *right* possessed by either of these lessees had surely lost *its* character of Indian title to land.

VII.

That the alleged lease under which the appellant claims is invalid, of no legal force or effect, and insufficient to create any interest in, or right to, the possession of the property in controversy.

The lease is set out as an exhibit to the answer. (Record, page 17.)

As originally executed by the parties, it appears to be under seal and to contain covenants on the part of the lessee to pay to the lessor, *Moose Dung*, the rental of two hundred dollars per year for twenty years. By the approval of the Department of the Interior, the rental is directed to be four hundred dollars per year for five years, with provisions for arbitration and renewal, but is directed to be paid, not to *Moose Dung*, but to the agent in charge of the Chippewa Indians in Minnesota and by him *paid to the parties to be found entitled thereto by the Department.*

This so-called *approval* is neither the lease of the Government of the United States nor of Moose Dung. It does not purport to convey any interest of the United States in the premises, and if it did it would have been absolutely void, as executed without authority, as there is no provision of law for leasing the public land; it must have proceeded upon the assumption of some supported right of guardianship residing in the Department of the Interior over the contracts of an individual Indian. None such has ever before been asserted to exist. The fact that the Government exercises a guardianship over the affairs of Indian nations does not warrant the interference by a particular branch of the Government with the personal affairs of an individual Indian.

The Congressional Resolution No. 5 set up in the answer is absolutely void and unconstitutional.

"Congress has no constitutional power to settle or interfere with rights under treaties, except in cases purely political."

Holden v. Joy, 84 U. S. 247.

Attached to this so-called approval are what purport to be two acceptances, one by Moose Dung and one by appellant.

Neither is under seal, neither expresses a consideration, and that of Moose Dung is clearly *nudum pactum*.

The approval, in so far as it assumes to make any contract or alter or supervise one already made, is void.

The acceptance of a void approval can be no contract.

The approval and acceptances are not entitled to record in the county where the land lies, and any possession attempted to be asserted under them must be *actual*.

An entry on land for the purpose of making surveys, when no further acts of possession are done, is not such an entry or possession as would be sufficient to entitle a party to maintain this suit, or even to put the statute of limitation into operation ; it is no occupancy or possession. By the courts it is said to be too cursory in its nature to impress upon the land the claim of the entryman.

To assert in the same breath that appellees were not in possession, by their logs, piling, and booms and mill-pond, but that appellant was, by the driving of a stake, is compatible only with the various and shifting positions assumed by the appellant.

We might also, at the risk of being considered technical, say, in this connection, that the lease to appellant is shown to have been executed and acknowledged before a notary public of the State of Minnesota within the limits of the Red Lake Indian reservation, and out of the civil jurisdiction of the State, and therefore not entitled to record, for the reason that it is not properly acknowledged and that it is not properly proven here in evidence.

The cause of the appellees is that of equity and good conscience. It is shown by the evidence, and undisputed, that at the time of entering into their lease the country about the land in controversy was new and undeveloped. Moose Dung, in all the years which had gone before, had never even been offered for the use of the entire section what appellees paid for the first year's rental of the ten-foot strip.

If the property embraced in the lease has now any greater rental value than at the time of its execution, the appellees, and no one else, are entitled to the credit of making that condition possible ; theirs is the only industry founded in the place, and they caused the railroad to be brought in, and transformed a wilderness into civilization.

They are shown to have expended over \$200,000 in an enterprise which has been the only source of the rise in the value of any property in the vicinity of Thief River Falls ; and now, as a reward for their honest endeavor, they are subjected to the attack of an adventurer, who admits that he has not a dollar invested in all that country, save such as he has expended in seeking to break down the appellees' lease.

We ask a careful consideration, by the court, of the following propositions :

1. There being no restraint upon Moose Dung's power of alienation, he had an absolute right to dispose of such interest in the land as he may have acquired, whatever the extent of the same.

2. Hence, any proceedings by the Government looking to the approval or disapproval of any of the Indian's leases must have been nugatory and void.

3. Appellees having the actual seisin, their possession alone entitled them to maintain the suit.

Gen'l Statutes, Minnesota, 1878, page 814, Sec. 2.
Holland v. Challen, 110 U. S. 15.

4. Appellees were entitled to the decree unless appellant showed a title superior to appellees' actual seisin.

5. Moose Dung, the common lessor of both parties, having a fee title, there being no restraint upon his power of alienation, appellees' lease was valid *per se*.

6. If it be held that Moose Dung had not a fee title, but only a possessory right, or some estate or interest in

the land less than a fee, appellees were nevertheless entitled to the decree, for their lease carried such estate or right, if any, as the lessor possessed, to the extent of the leaseholder interest which appellees' lease purported to transfer.

7. If it be held that Moose Dung had no title whatever, appellees were still entitled to the decree as against the appellant, for in such a case all leases made by the Indian are equally void, and appellant had no title to enforce as against appellees' *possession*.

8. If the Indian had no title his void lease to appellant could not be made effectual by an approval of the same by the Government.

9. The so-called "approval" secured by the appellant *is not a lease of the land*, nor does such approval purport to transfer *any right from the Government* to the appellant.

10. Under the approval appellant can claim no right of possession by estoppel, for there can be no estoppel against the Government.

11. The joint resolution of Congress authorizing the approval of the lease to appellant does not specify what legal effect such approval shall have.

12. It was not in the power of Congress to place any construction on the article of the treaty prejudicial to any party claiming under it, nor to presume to say what was meant by the language of the treaty.

13. If Moose Dung had no title, then the title was in the Government, and the approval by the Government of a void lease to appellant could not operate to transfer any right to appellant.

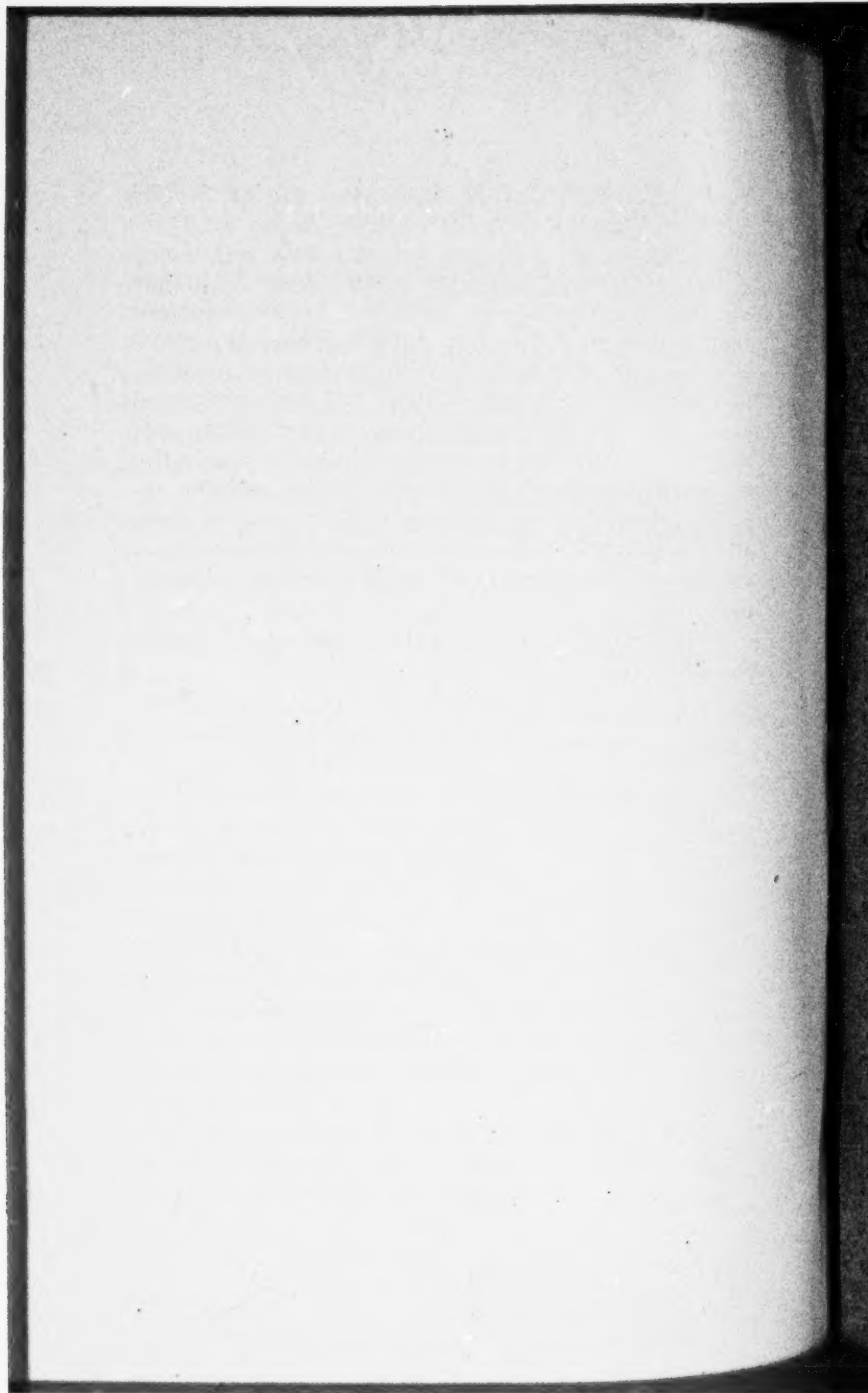
However, it would seem clear that the elder Moose Dung *either* acquired a fee title which descended to his heirs, *or*, that he was given a personal right of occupancy

which terminated when he died. And, for the reasons already stated, appellees were entitled to the decree in either case.

The appellees claim that the Indian, Moose Dung, was the absolute owner of the land; that he possessed the right to dispose of the same; that the lease to appellees is a good and valid demise of the land in controversy; that the appellant has at all times had both actual and constructive notice of the same; that the pretended rights asserted by appellant are invalid and illegal; that justice and equity demanded, alike for the Indian and the appellees, that the grant contained in the treaty be given effect; that appellees should be adjudged to have a good and valid lease, the conditions of which they have faithfully performed.

And, for these reasons, that the decree appealed from should be affirmed.

C. K. DAVIS,
FRANK B. KELLOGG,
C. A. SEVERANCE,
Counsel for Appellees.



UNITED STATES OF AMERICA.

SUPREME COURT.

RAY W. JONES,

Appellant,

vs.

PATRICK MEEHAN AND JAMES MEEHAN,

Appellees.

Sir:—

You will please take notice that on the 12th day of October, A. D. 1896, at the court room in the Capitol at Washington, D. C., at the opening of the court on that day, or as soon thereafter as counsel can be heard, we shall, on behalf of the appellant above named, present to the court a motion, a copy of which is hereto annexed and herewith served on you, and shall read in support of said motion the record and affidavits, copies of which are herewith handed you.

Yours etc.,

JAMES A. KELLOGG,

Counsel for Appellant,

1129-30-31 Lumber Exchange,

Minneapolis, Minnesota.

To C. D. O'Brien, T. D. O'Brien and Orville Rinehart,

Counsel for Appellees,

Dated September 30th, 1896.

[Title of Cause.]

Now comes the above named appellant by his counsel and moves the court now here to advance the above entitled cause on the calendar of the court and set the same for hearing at the earliest possible date for the reasons following:

I.

The question involved is the right of the government to supervise and control the contract of Tribal Indians.

II.

That relying on the assumption of authority in the government to control the contract of Tribal Indians, appellant has expended several hundred dollars in rentals of the premises involved in this case and is entitled to the possession thereof, but by the proceedings in this case is held out of possession by reason of which he is hindered and delayed in the construction of the mill and appurtenances upon the land for which he has rented the same.

III.

It is of great public importance to the people on and off the Red Lake Reservation that appellant be allowed to proceed with the construction of his mill on the premises involved in this cause.

Dated this 30th day of September, 1896.

JAMES A. KELLOGG,

Counsel for Appellant,

1129-30-31 Lumber Exchange,

Minneapolis, Minnesota.

[Title of Cause.]

Prior to October 2nd, 1863, the land in question had been in the possession of the Red Lake and Pembina bands of Chipewa Indians, and on that day by a treaty concluded at the old crossing of Red Lake River between the Government of the United States and said bands of Indians, the same was ceded to the Government of the United States. Article 9 of said treaty reads as follows: "Upon the urgent request of the Indians, parties to this treaty, there shall be set apart from the tract hereby ceded a reservation of six hundred forty (640) acres near the mouth of Thief River for the Chief Moose Dung," of which said reservation, the land in question, in this cause, viz: Lot one (1) in section thirty-four (34) is a part. Subsequent to the treaty and before the survey into Government sub-divisions this Indian died and the present chief Mon-si-mo made selection of the lands and the same was set apart and designated upon the maps and plats of the Government of the United States as "Moose Dung's Reservation." The elder chief and the present chief were both Tribal Indians. The appellant procured from the present chief a lease of lot

one (1) for the period of twenty (20) years for the purpose of placing thereon a saw mill for the manufacture of lumber to which he would bring the logs from Red Lake River which flows along the margin of said lot one.

Subsequent to the procurement of the lease from the Indian there was introduced into congress a joint resolution and duly passed and approved August 4th, 1894, and known as private resolution No. 5, which reads as follows: "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled that the Secretary of the Interior be and he is hereby authorized to approve, if in his discretion he deems the same proper and advisable, and upon such terms and limitations as he may impose, that certain lease made and executed by Mon-si-mo, commonly called Moose Dung, to Ray W. Jones of lot one in section thirty-four, in township one hundred and fifty-four north, of range forty-three west, in the county of Polk and state of Minnesota, which said lease is now on file in the office of the Indian affairs." And afterwards and on the 13th day of November, 1895, the Secretary of the Interior duly approved said lease to Jones, modifying the terms and conditions of the lease whereby the rental was increased from two hundred dollars (\$200) to four hundred dollars (\$400) per annum, and providing that at periods of five (5) years each the rental should be readjusted and approved by the department of the Interior. Lot one was vacant and unoccupied until about the 6th day of December, when the appellees took possession of about ten (10) feet along the shore of Red Lake River, under the lease given by said Moose Dung dated the 7th day of November, 1891, in which the premises leased are described as follows: "Ten (10) feet wide off the bank of the Red Lake River along the waters edge as the bank is flooded by the certain dam constructed across the said Red Lake River * * * same to be used for storing logs, erecting piers and booms and maintaining same to the design of the parties of the second part and for the use and purposes and for all purposes connected with lumbering industry thereby to convey all shore rights for the term of this lease for lumbering purposes" upon a consideration of twenty-five dollars (\$25.00) per annum for the period of ten years.

When application was made to the Interior department for approval of the Jones lease the appellees opposed the approval of the Jones lease and sought to have approved by the depart-

ment a lease made by the said Indian to the appellees and dated August 20th, 1894, and also the lease dated November 7th, 1891, both of which were disapproved by the department of the Interior.

After the appellees had taken possession of the strip along the waters edge on about December 6th, 1894, they brought this action to quiet title.

The rental in the Jones lease by the approval of the Secretary of the Interior was made payable to United States Agent in charge of the Chippewa Indians in Minnesota, to be paid by him to the heirs of the elder chief Mon-si-mo. In the performance of this duty the agent ascertained that the elder chief left surviving him five heirs other than the present chief Mon-si-mo, and when this fact was determined the appellant obtained from the five other heirs a lease upon the same terms and conditions as that provided for by the Secretary of the Interior of the lease from Mon-si-mo, and the rental has been paid by the appellant to the Indian Agent and by him paid and received by the several heirs of the elder Mon-si-mo. The court for the Eighth Circuit, District of Minnesota and Fourth Division, by its decree held that the lease of November 7th, 1891, was a valid demise of the premises described therein, quieted the title in the appellees and perpetually enjoined the appellant from taking possession thereof.

Subsequent to the procurement of the lease from the five other heirs of the elder chief the appellant asked to file a supplemental answer setting up that fact, which application the court denied.

Jurisdictional grounds in the Circuit Court is diverse citizenship of the parties. The Circuit Court in deciding it held that the treaty gave to the elder chief a title in fee and that the present chief, Mon-si-mo, might convey that title without the intervention or the approval of the Government. An appeal was taken from this decree to the United States Circuit Court of Appeals for the Eighth Circuit and was by that court dismissed on the grounds that it had not jurisdiction.

It is undisputed that the elder chief and all his heirs now living are Tribal Indians under the care and supervision of the Government of the United States and living on a general reservation set apart for the Red Lake band of Chippewa Indians, known as the Red Lake reservation in the state of Minnesota.

The question to be determined is (1) whether a full blood

Tribal Indian living on a general reservation under the care and supervision of the United States through its agent may make a valid demise of the lands in which the reservation is made to an individual full blood Tribal Indian by a treaty stipulation in which there are no words of grant without the consent and approval of the Government of the United States.

For a full statement and discussion of the case appellant begs leave to refer the court to the brief in his behalf on file with the clerk of this court. This case having been taken on appeal to the United States Circuit Court of Appeals for the Eighth Circuit, the record and brief was printed for that court and copies thereof are now on file in this court, to which appellant begs leave to refer the court.

Respectfully submitted,

JAMES A. KELLOGG,

Counsel for appellant,

1129-30-31 Lumber Exchange,

Minneapolis, Minnesota.

[Title of Cause.]

STATE OF MINNESOTA,)
COUNTY OF HENNEPIN.) ss.

Ray W. Jones, being first duly sworn, deposes and says that he is the appellant above named and that he procured a lease from the Indian Mon-si-mo of the land in the record described, for the purpose and with the intention of erecting thereon a saw mill and the usual appurtenances, and that he is now desirous and anxious to construct such mill and appurtenances for the purpose of manufacturing lumber, laths and shingles and other articles from forest products, and that by reason of the delay he is seriously injured and damaged.

Deponent further says that as is disclosed by the record in this cause the rental is four hundred dollars (\$400.00) per annum, and with that he procured the lease from the said Indian Mon-si-mo, and the approval thereof by the Government of the United States. Believing that he would thereby be enabled to occupy said premises with his said enterprise.

Deponent further says that it is material and necessary for deponent to know at the earliest possible moment if he be allowed to occupy said premises with his said enterprise and that

if he is not that he may procure another location and construct the same at a time when the same may be constructed at a less cost than at a later period.

Wherefore, deponent asks this Honorable Court to advance the hearing of said cause upon the calendar and to hear and dispose of the same at their earliest possible moment.

RAY W. JONES.

Subscribed and sworn to before me, this 29th day of September, 1896.

JAMES A. KELLOGG,

Notary Public,

Hennepin County, Minnesota.

[Notarial Seal.]

[Title of Cause.]

James A. Kellogg came personally before me, and being first duly sworn, deposes and says that he is counsel for the above named appellant in the above entitled cause. That he has been solicitor for the appellant in said cause from its commencement and in charge thereof. That after the decree was entered in the Circuit Court deponent believed that an appeal lay to the United States Circuit Court of Appeals, Eighth Circuit, and accordingly perfected an appeal to said court; the same was duly docketed for the May, A. D. 1896 term of said court, whereupon the appellees presented to said court the motion following:

"The appellees move to dismiss the appeal herein, heretofore allowed and taken to this court from the United States Circuit Court for the district of Minnesota, fourth division, for the following reasons, to-wit: That this court has no jurisdiction to entertain said appeal in that the case is one in which is involved the construction of a treaty made under the authority of the United States, this motion is based on the pleadings, decision and assignments of error and the record in said cause." Deponent says afterwards and on the 28th day of May, 1896, said court of appeals made their order as follows:

"On consideration whereof, it is now here ordered, adjudged and decreed by this court that the appeal in this cause from the said circuit court be and the same is hereby dismissed with costs for want of jurisdiction," and that afterwards the said

Circuit Court of Appeals issued its mandate to the United States Circuit Court, Eighth Circuit, District of Minnesota, a certified copy of which is hereto annexed, marked "A," and made a part hereof.

Deponent further says that it is important to the interests of the appellant that this cause in this court be heard and determined at the earliest possible date, that deponent has had charge of the matter from procuring the lease from the Indian Mon-si-mo, and that the approval of the Government of the United States of the lease so made by Mon-si-mo was procured upon the advice of deponent, and that deponent believed that the lease of land owned and controlled by a Tribal Indian was nugatory and void until approved by the Government of the United States, and so advised the appellant, and that appellant is suffering great damages by the delay caused by the litigation in this cause and further deponent saith not.

JAMES A. KELLOGG.

Subscribed and sworn to before me this 2nd day of October, 1896.

GEO. B. YOUNG,

Notary Public,

Hennepin County, Minnesota.

[Notarial Seal.]

UNITED STATES OF AMERICA, ss.

The President of the United States of America, to the
Honorable the Judges of the Circuit Court of
the United States for the District
of Minnesota.

GREETING:

Whereas, lately in the Circuit Court of the United States for the District of Minnesota, before you, or some of you, in a cause between Patrick Meehan and James Meehan, complainants, and Ray W. Jones, defendant, wherein the decree of the said Circuit Court in said cause, entered on the 16th day of December, A. D. 1895, was in favor of the complainants and against the defendant, as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the United States Circuit Court of Appeals, Eighth Circuit, by virtue of an appeal agreeably to the act of

congress, in such cause made and provided, fully and at large appears.

And whereas, in the present term of May, in the year of our Lord one thousand eight hundred and ninety-six, the said cause came on to be heard before the said United States Circuit Court of Appeals, on the transcript of the record from the Circuit Court of the United States for the District of Minnesota, and upon the motion of appellees to dismiss the appeal herein and was agreed by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the appeal in this cause from the said Circuit Court, be and the same is hereby dismissed with costs for want of jurisdiction, and that Patrick Meehan and James Meehan have and recover against Ray W. Jones the sum of twenty dollars for their costs herein and have execution therefor.

May 28, 1896.

You, therefore, are hereby commanded that such execution and proceedings be had in the same cause, as according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, the fifth day of September, in the year of our Lord one thousand eight hundred and ninety-six.

COST OF APPELLEES.

Clerk.....	} Paid by Appellant.	
Printing Record.....		
Attorney.....		
		\$20.00
		<u>\$20.00</u>

JOHN D. JORDAN,

[Seal of U. S. Circuit
Court of Appeals,
Eighth Circuit.]

Clerk of the United States
Circuit Court of Appeals,
Eighth Circuit.

UNITED STATES OF AMERICA,	} SCT.
DISTRICT OF MINNESOTA,	
Fourth Division.	

I, Oscar B. Hillis, clerk of the Circuit Court of the United States for the District of Minnesota, do hereby certify that I have carefully compared the foregoing paper writing with the

original thereof, which is in my custody as such clerk, and that such copy is a correct copy of such original, and of the whole thereof, in the cause therein named.

Witness my hand as clerk, and the seal of said court, done at my office in Minneapolis, Minnesota, this 2d day of October, A. D. 1896.

OSCAR B. HILLIS, Clerk.

By R. C. MABEY, Deputy.

Endorsed, Filed, Sept. 9th, 1896.

OSCAR B. HILLIS, Clerk.

By R. C. MABEY, Deputy.

CASES ADJUDGED
IN THE
SUPREME COURT OF THE UNITED STATES,
AT
OCTOBER TERM, 1899.

JONES *v.* MEEHAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MINNESOTA.

No. 7. Argued April 27, 1898. — Decided October 30, 1899.

A good title to parts of the lands of an Indian tribe may be granted to individuals by a treaty between the United States and the tribe, without any act of Congress, or any patent from the Executive authority of the United States. The question in every case is whether the terms of the treaty are such as to manifest the intention of the parties to make a present grant to the persons named.

A treaty between the United States and an Indian tribe must be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians.

When the United States, in a treaty with an Indian tribe, and as part of the consideration for the cession by the tribe of a tract of country to the United States, make a reservation to a chief or other member of the tribe of a specified number of sections of land, whether already identified, or to be surveyed and located in the future, the treaty itself converts the reserved sections into individual property; the reservation, unless accompanied by words limiting its effect, is equivalent to a present grant of a complete title in fee simple; and that title is alienable by the grantee at his pleasure, unless the United States, by a provision of the treaty, or of an act of Congress, have expressly or impliedly prohibited or restricted its alienation.

Opinion of the Court.

The effect of the treaty of October 2, 1863, between the United States and the Red Lake and Pembina bands of Chippewa Indians, by which those bands ceded to the United States all their right, title and interest in a large tract of country, and by which "there shall be set apart from the tract hereby ceded a reservation of six hundred and forty acres near the mouth of the Thief River for the chief Moose Dung," was to grant him an alienable title in fee in the quantity of land at the designated place, subject only to its selection in due form, and to the definition of its boundaries by survey and patent.

The right of inheritance, at the time of the death of the grantee in 1872, in land granted in fee by the United States by an Indian treaty to a member of an Indian tribe, whose tribal organization was still recognized by the Government of the United States, is controlled by the laws, usages and customs of the tribe, and not by the law of the State in which the land lies, nor by any action of the Secretary of the Interior.

The construction of treaties is the peculiar province of the judiciary; and, except in cases purely political, Congress has no constitutional power to settle the rights under a treaty, or to affect titles already granted by the treaty itself.

THE case is stated in the opinion.

Mr. James A. Kellogg for appellant.

Mr. Cushman K. Davis for appellees. *Mr. Frank B. Kellogg* and *Mr. C. A. Severance* were with him on the brief.

MR. JUSTICE GRAY delivered the opinion of the court.

This was a bill in equity, filed in the Circuit Court of the United States for the District of Minnesota, by Patrick Meehan and James Meehan, citizens of Wisconsin, against Ray W. Jones, a citizen of Minnesota, to quiet title in a strip of land ten feet wide along the westerly shore of the Red Lake River, in the county of Polk and State of Minnesota, extending from the northeasterly intersection of the plat of the village of Thief River Falls with the shore at a point near the junction of the two rivers, and being a part of lot 1 in section 34, township 154 and range 43.

For convenience, the parties will be designated, throughout this opinion, according to their position in the court below; the Meehans, now appellees, as the plaintiffs; and Jones, now appellant, as the defendant.

Opinion of the Court.

Each party derived title under the "reservation of six hundred and forty acres near the mouth of Thief River for the chief Moose Dung" in article 9 of the treaty made at the Old Crossing of Red Lake River in the State of Minnesota, on October 2, 1863, between the United States, by their Commissioners, Alexander Ramsay, a Senator of the United States for the State of Minnesota, and Ashley C. Morrill, agent for the Chippewa Indians, of the one part, and the Red Lake and Pembina bands of Chippewa Indians, by their chiefs, headmen and warriors, of the other part, and afterwards ratified by the Senate, with amendments assented to by the Indians. 13 Stat. 667-671. The material provisions of that treaty were as follows:

By article 2, those bands of Chippewas ceded to the United States all their right, title and interest in a large tract of country to the west of Thief River in the State of Minnesota, including all the American valley of the Red River of the North.

By article 3, "In consideration of the foregoing cession, the United States agree to pay to the said Red Lake and Pembina bands of Chippewa Indians the following sums, to wit, twenty thousand dollars per annum for twenty years; the said sum to be distributed among the Chippewa Indians of the said bands in equal amounts per capita."

By article 5, "To encourage and aid the chiefs of said bands in preserving order, and inducing, by their example and advice, the members of their respective bands to adopt the habits and pursuits of civilized life, there shall be paid to each of the said chiefs annually, out of the annuities of the said bands, a sum not exceeding one hundred and fifty dollars, to be determined by their agents according to their respective merits. And for the better promotion of the above objects, a further sum of five hundred dollars shall be paid at the first payment to each of the said chiefs to enable him to build for himself a house."

By article 8, "In further consideration of the foregoing cession, it is hereby agreed that the United States shall grant to each male adult half-breed or mixed-blood who is related

Opinion of the Court.

by blood to the said Chippewas of the said Red Lake or Pembina bands, who has adopted the habits and customs of civilized life, and who is a citizen of the United States, a homestead of one hundred and sixty acres of land, to be selected at his option, within the limits of the tract of country hereby ceded to the United States, on any land not previously occupied by actual settlers or covered by prior grants, the boundaries thereof to be adjusted in conformity with the lines of the official surveys when the same shall be made, and with the laws and regulations of the United States affecting the location and entry of the same."

By one of the amendments made by the Senate, with the assent of the Indians, there was inserted at the end of article 8 the following: "Provided, that no scrip shall be issued under the provisions of this article, and no assignments shall be made of any right, title or interest at law or in equity until a patent shall issue, and no patent shall be issued until due proof of five years' actual residence and cultivation, as required by the act entitled 'An act to secure homesteads on the public domain.'"

By article 9 of the treaty, "Upon the urgent request of the Indians, parties to this treaty, there shall be set apart from the tract hereby ceded a reservation of six hundred and forty acres near the mouth of Thief River for the chief Moose Dung, and a like reservation of six hundred and forty acres for the chief Red Bear on the north side of Pembina River."

Moose Dung or Monsimoh was one of the principal chiefs of the Red Lake band of Chippewa Indians, and his name was the first of the Indian signatures to the treaty, all of which were by marks only.

The plaintiffs, against the defendant's objection, introduced in evidence certified copies of extracts from the journal of the proceedings at the negotiation of the treaty, annexed to the report made by Mr. Ramsay to the Commissioner of Indian Affairs in October, 1863. That journal stated that "Moose Dung, who was really the most influential of all the chiefs, stood at the head of a party embracing the large majority of all the bands who were favorable to and even anxious for

Opinion of the Court.

a treaty." It also showed that part of the discussion was as follows: Moose Dung said: "I have taken the mouth of Thieving River as my inheritance. I do not ask the chiefs here where I shall go. I make my home there. I wanted it for a reservation for myself." "I used to think that this was the proper place for me to settle; that it would be an inheritance for my children — where all my children could have enough to live on in the future." Mr. Ramsay answered: "Tell him I don't care anything about the mouth of Thieving River. He can have it if he wants it." Moose Dung replied: "I accept of the proposition, because I see that I am going to be raised from want to riches — to be raised to the level of the white man." "You and the Government have used every exertion for a great many years to bring about a treaty. I do not want you to exert yourselves in vain. I now give up the tract of country." The journal further stated that "at the end of a session of three and a half hours' duration Moose Dung, who has stood for an hour weighing and deliberating on every separate provision of this treaty, asking for this explanation and that modification, appearing to labor under a serious sense of the great responsibility he was taking, at last touched the pen which was to affix his vicarious sign-manual to the treaty," and the other chiefs followed his example.

The plaintiffs also, against the like objection, introduced testimony of the secretary of the commission, of the official interpreter, and of other persons, Indians as well as white persons, who were present at the negotiations of the treaty, to the same effect.

Moose Dung selected as his reservation, under the ninth article of the treaty, six hundred and forty acres, a part of which was lot 1 in section 34, including the strip now in controversy; and he lived on that land at the mouth of Thief River, and made it his home, and had a log house, a garden and a fish trap there. He died in 1872, before the lands were surveyed, and was succeeded as chief by his eldest son, who had been born at Red Lake in 1828, and who was known to the whites by the name of Moose Dung or Monsimoh, and to the Indians as Mayskokonoyay, meaning "The one that wears the

Opinion of the Court.

red robes;" and, ever since the making of the treaty, his father and himself, in succession, sustained tribal relations with the Red Lake band of Chippewa Indians, and that band continued to be recognized as an Indian tribe by the Government of the United States.

On June 27, 1879, the United States Indian agent at White Earth, Minnesota, wrote to the Commissioner of Indian Affairs at Washington that Moose Dung the younger, the only surviving son of Moose Dung named in the treaty, requested that the land selected by his father might be set aside for his benefit. On July 25, 1879, the Commissioner of Indian Affairs answered that Moose Dung the younger should at once locate the desired lands in accordance with the description in the treaty; and that it must be shown to the satisfaction of the Office of Indian Affairs that his father left no other children. On September 10, 1879, the agent replied that "the heirs of Moose Dung" had selected the lands (describing them particularly) that had been selected by the elder Moose Dung before his death. On September 30, 1879, the Secretary of the Interior, on the recommendation of the Commissioner of Indian Affairs, approved "the selection made by the heirs of Moose Dung," and directed the Commissioner of the General Land Office to "take the necessary steps for the protection of the said lands so reserved for the benefit of those entitled, as contemplated by the treaty stipulations;" and they were thereupon set apart accordingly, and were designated on all government maps as "Moose Dung's reservation."

From the time of this selection Moose Dung the younger lived upon, exercised dominion over, and claimed to own, the land so selected, and cultivated part of it, leased other parts of it for pasturage, and sold sand off it.

On November 7, 1891, Moose Dung the younger, describing himself as "Moose Dung, of Thief River Falls, Polk County, Minnesota," made a lease to the plaintiffs, for ten years, at an annual rent of twenty-five dollars, of this strip of land and all shore rights for storing logs, erecting piles and booms, and for all purposes connected with lumbering; and he affixed to it his mark and seal, and acknowledged it before a notary public,

Opinion of the Court.

after its contents had been fully explained to him through an interpreter. On November 10, 1891, this lease was recorded in the registry of deeds for the county. The plaintiffs accepted the lease and paid the rent according to its terms; and in 1892 they erected a large saw-mill on the bank of Thief River, a short distance below the strip leased, and entered upon this strip, drove piles and strung booms in the river opposite, and stored logs there, and thenceforth used the strip as one shore of the mill-pond appurtenant to their saw-mill.

The land selected by Moose Dung was near the village of Thief River Falls, which, when this lease was made, contained some fifty inhabitants and had no railroad and no important industry, and land there was of little value. But in 1892, after the erection of the plaintiffs' saw-mill, the Great Northern Railway Company built a railroad to the village, a large settlement sprang up there, and the land increased in value.

On July 20, 1894, Moose Dung the younger, describing himself as "Monsimoh, (commonly called Moose Dung,) heir and successor of his father Monsimoh, (also commonly called Moose Dung,)" made a lease of the whole of lot 1 in section 34, and of all appurtenances and riparian rights thereto belonging, for twenty years, to the defendant, at an annual rent of two hundred dollars; and on July 23, 1894, this lease was recorded in the registry of deeds. The defendant, at the time of obtaining this lease, knew of the prior lease and possession of the plaintiffs. On August 4, 1894, Congress passed a joint resolution authorizing the Secretary of the Interior "to approve, if in his discretion he deems the same proper and advisable, and upon such terms as he may impose," this lease to the defendant. 28 Stat. 1018. On December 27, 1894, the Secretary of the Interior approved this lease, upon condition (to which both the lessor and the lessee assented) that the annual rent should be four hundred dollars, and "be paid to the agent in charge of the Chippewa Indians in Minnesota, and by him paid to the parties found to be entitled thereto by this Department," and should be readjusted every five years, and "the said premises, nor any part thereof, shall not be sublet

Opinion of the Court.

without the written consent of the lessor, his heirs or assigns, and the approval of the Secretary of the Interior."

The Circuit Court held that the reservation in the treaty to the elder Moose Dung was in the nature of a grant of title to him, burdened with no restriction or condition save that of selection and identification; that upon the selection and location the title in the selected lands vested in Moose Dung the younger as his eldest son and successor; that the latter's lease of November 9, 1891, to the plaintiffs was a valid and subsisting lease of the strip in controversy, and needed no approval by the Secretary of the Interior; that the lease made on July 20, 1894, to the defendant, and approved by the Secretary of the Interior, was subordinate to the lease to the plaintiffs, and, as against them, conveyed no right to the occupancy or use of the strip; and that the plaintiffs were entitled to have the rights and privileges under the earlier lease vested and quieted in them as against the claims of the defendant. 70 Fed. Rep. 453. The defendant appealed to this court.

The fundamental question in the case is, What was the nature of the title which the elder chief Moose Dung took under the treaty of October 2, 1863, between the United States and the Red Lake and Pembina bands of Chippewa Indians? Was it a mere right of occupancy, with no power to convey the land except to the United States or by their consent? Or was it substantially a title in fee simple with full power of alienation?

Undoubtedly, the right of the Indian nations or tribes to their lands within the United States was a right of possession or occupancy only; the ultimate title in fee in those lands was in the United States; and the Indian title could not be conveyed by the Indians to any one but the United States, without the consent of the United States. *Johnson v. McIntosh*, 8 Wheat. 543; *Cherokee Nation v. Georgia*, 5 Pet. 1, 17; *Worcester v. Georgia*, 6 Pet. 515, 544; *Doe v. Wilson*, 23 How. 457, 463; *United States v. Cook*, 19 Wall. 591; *United States v. Kagama*, 118 U. S. 375, 381; *Buttz v. Northern Pacific Railroad*, 119 U. S. 55, 67. In the leading case of *Johnson v. McIntosh*, (1823) it was therefore held that grants of lands

Opinion of the Court.

northwest of the river Ohio, made in 1773 and 1775 by the chiefs of certain Indian tribes, constituting the Illinois and the Pinkeshaw nations, to private individuals, conveyed no title which could be recognized in the courts of the United States; and Chief Justice Marshall, in delivering judgment, said: "The usual mode adopted by the Indians for granting lands to individuals has been to reserve them in a treaty, or to grant them under the sanction of the commissioners with whom the treaty was negotiated." 8 Wheat. 598.

Accordingly, by several early treaties between the United States of the one part, and the Chippewas and other Indian nations of the other part, the said Indian nations acknowledged themselves to be under the protection of the United States, and of no other sovereign whatever; the United States relinquished and quitclaimed to the said nations respectively all the lands lying within certain limits, to live and hunt upon, and otherwise occupy as they saw fit; but the said nations, or either of them, were not to be at liberty to dispose of those lands, except to the United States. Treaties of January 1, 1785, art. 2; January 9, 1789, art. 3; August 3, 1795, arts. 4, 5; 7 Stat. 16, 29, 52.

Soon after the adoption of the Constitution, the same doctrine was repeatedly recognized and enforced by Congress in temporary acts regulating trade and intercourse with the Indian tribes. By the act of July 22, 1790, c. 33, § 4, it was "enacted and declared that no sale of lands made by any Indians, or any nation or tribe of Indians, within the United States, shall be valid, to any person or persons, or to any State, whether having the right of preëmption to such lands or not, unless the same shall be made and duly executed at some public treaty held under the authority of the United States." 1 Stat. 138. In the act of March 1, 1793, c. 19, § 8, the corresponding provision was that "no purchase or grant of lands, or of any title or claim thereto, from any Indians, or nation or tribe of Indians, within the bounds of the United States, shall be of any validity, in law or equity, unless the same be made by a treaty or convention entered into pursuant to the Constitution." 1 Stat. 330. In the acts of May 19, 1796, c. 30,

Opinion of the Court.

§ 12, and March 3, 1799, c. 46, § 12, this provision was reënacted, substituting for the words "purchase or grant" the words "purchase, grant, lease or other conveyance," and for the words "any Indians," in the plural, the words "any Indian," in the singular, so as to read: "No purchase, grant, lease or other conveyance of lands, or of any title or claim thereto, from any Indian, or nation or tribe of Indians, within the bounds of the United States, shall be of any validity, in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution." 1 Stat. 472, 746. And this language of the temporary acts of 1796 and 1799 was repeated in the first permanent enactment upon the subject, being the act of March 30, 1802, c. 13, § 12. 2 Stat. 143.

It is well settled that a good title to parts of the lands of an Indian tribe may be granted to individuals by a treaty between the United States and the tribe, without any act of Congress, or any patent from the Executive authority of the United States. *Johnson v. McIntosh*, 8 Wheat. above cited; *Mitchel v. United States*, 9 Pet. 711, 748; *Doe v. Beardsley*, 2 McLean, 417, 418; *United States v. Brooks*, 10 How. 442, 460; *Doe v. Wilson*, 23 How. 457, 463; *Crews v. Burcham*, 1 Black, 356; *Holden v. Joy*, 17 Wall. 211, 247; *Best v. Polk*, 18 Wall. 112, 116; *New York Indians v. United States*, 170 U. S. 1. The question in every case is whether the terms of the treaty are such as to manifest the intention of the parties to make a present grant to the persons named.

The Indian tribes within the limits of the United States are not foreign nations; though distinct political communities, they are in a dependent condition; and Chief Justice Marshall's description, that "they are in a state of pupilage," and "their relation to the United States resembles that of a ward to his guardian," has become more and more appropriate as they have grown less powerful and more dependent. *Cherokee Nation v. Georgia*, 5 Pet. 1, 17; *Elk v. Wilkins*, 112 U. S. 94, 99; *United States v. Kagama*, 118 U. S. 375, 382, 384; *Stephens v. Choctaw Nation*, 174 U. S. 445, 484.

In construing any treaty between the United States and an

Opinion of the Court.

Indian tribe, it must always (as was pointed out by the counsel for the appellees) be borne in mind that the negotiations for the treaty are conducted, on the part of the United States, an enlightened and powerful nation, by representatives skilled in diplomacy, masters of a written language, understanding the modes and forms of creating the various technical estates known to their law, and assisted by an interpreter employed by themselves; that the treaty is drawn up by them and in their own language; that the Indians, on the other hand, are a weak and dependent people, who have no written language and are wholly unfamiliar with all the forms of legal expression, and whose only knowledge of the terms in which the treaty is framed is that imparted to them by the interpreter employed by the United States; and that the treaty must therefore be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians. *Worcester v. Georgia*, 6 Pet. 515; *The Kansas Indians*, 5 Wall. 737, 760; *Choctaw Nation v. United States*, 119 U. S. 1, 27, 28. In the case of *Worcester v. Georgia*, (1832) Chief Justice Marshall, speaking of article 4 of the treaty of Hopewell of November 28, 1785, between the United States and the Cherokee Indians, which defined "the boundary allotted to the Cherokees for their hunting grounds, between the said Indians and the citizens of the United States," (7 Stat. 19,) said: "There is the more reason for supposing that the Cherokee chiefs were not very critical judges of the language, from the fact that every one makes his mark; no chief was capable of signing his name. It is probable the treaty was interpreted to them." "Is it reasonable to suppose that the Indians, who could not write, and most probably could not read, who certainly were not critical judges of our language, should distinguish the word 'allotted' from the words 'marked out'?" 6 Pet. 551, 552. And Mr. Justice McLean, concurring, said: "The language used in treaties with the Indians should never be construed to their prejudice." "To contend that the word 'allotted,' in reference to the lands guarantied to the Indians in certain treaties indicates a favor conferred, rather than a right ac-

Opinion of the Court.

knowledge, would, it would seem to me, do injustice to the understanding of the parties. How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction." 6 Pet. 582.

The defendant's counsel at the argument relied on an opinion given by Chief Justice Taney, when Attorney General, under the following circumstances: By the treaty made at Camp Tippecanoe in the State of Illinois on October 20, 1832, between the United States and the Pottawatomie tribe of Indians of the Prairie and Kaukakee, (while the act of March 30, 1802, c. 13, was in force,) that tribe ceded a large tract of land in Illinois to the United States, and it was provided that "from the cession aforesaid the following tracts shall be reserved, to wit," a certain number of sections to each of particular Indians named. 7 Stat. 378. On September 20, 1833, Attorney General Taney gave an opinion to the Secretary of War that "these reservations are excepted out of the grant made by the treaty, and did not therefore pass by it; consequently, the title remains as it was before the treaty; that is to say, the lands reserved are still held under the original Indian title;" and therefore "the Indian occupants cannot convey them to individuals, and no valid cession can be made of their interest but to the United States." 2 Opinions of Attorneys General, 587.

But within a year after that opinion was given, and perhaps in consequence thereof, Congress, in framing a new act regulating trade and intercourse with the Indian tribes, omitted the prohibition, contained in former statutes, of purchases or leases from "any Indian," and put the provision invalidating Indian conveyances in this altered form: "No purchase, grant, lease or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity, in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution." Act of June 30, 1834, c. 161, § 12; 4 Stat. 730. The declaration, retained in this act, of the invalidity of purchases and leases "from any nation or tribe of

Opinion of the Court.

Indians," might include a purchase or lease from any Indian acting by authority derived from his tribe only. *Johnson v. McIntosh*, 8 Wheat. 543, 593; *Smith v. Stevens*, 10 Wall. 321, 323; *Goodell v. Jackson*, 20 Johns. 693, 723. But the inference appears to us to be irresistible that Congress did not intend that there should thenceforth be any general restriction upon the alienation by individual Indians of sections of land reserved to them respectively by a treaty with the United States. And this view is confirmed by the reënactment of the provision, in the very words of the act of 1834, in section 2116 of the Revised Statutes, and by the course of decision in this court in a series of opinions which may conveniently be considered in their chronological order.

The supplementary articles of September 28, 1830, to the treaty of Dancing Rabbit Creek of September 27, 1830, between the United States and the Choctaw Nation of Indians, making provision for "various Choctaw persons," used, as synonymous expressions, the phrases "shall be entitled to a reservation of," "is allowed a reservation of," "there shall be granted," "there is given," or "is granted," sections of land, either including the present residence and improvement of such persons, or to be located on any unimproved and unoccupied land. 7 Stat. 340. In *Gaines v. Nicholson*, (1850) 9 How. 356, Mr. Justice Nelson, in delivering the opinion of the court, did say of such a reservation: "It was so much carved out of the territory ceded, and remained to the Indian occupant, as he had never parted with it. He holds, strictly speaking, not under the treaty of cession, but under his original title confirmed by the Government in the act of agreeing to the reservation." 9 How. 365. But that treaty was made before the act of Congress of 1834; the only question in the case was of the effect of the reservation as against a previous grant of land by Congress to a State for the support of schools; the court had no occasion to define, and did not undertake to define, the exact nature of the title granted or confirmed by the treaty; and the suggestion, in accordance with Attorney General Taney's opinion, above cited, that the treaty rather confirmed the Indian right than granted a new

Opinion of the Court.

title, can hardly be reconciled with the later judgments of the court, to be presently considered, one of which was delivered by the same learned judge. *Crews v. Burcham*, 1 Black, 352.

In concluding the treaty of July, 1, 1835, between the United States and the Caddo nation of Indians, in Louisiana, supplementary articles were added, by which, after a recital that that nation had in 1801 granted to one Francis Grappe (who was a half-blood Caddo) and to his three sons a league land of each, "it is agreed" that Grappe's legal representatives and his said three sons "shall have their right to the said four leagues of land reserved to them, and their heirs and assigns forever. The said land to be taken out of the lands ceded to the United States by the said Caddo nations of Indians as expressed in the treaty to which this article is supplementary. And the said four leagues of land shall be laid off in one body," at a place described, in conformity with the boundaries "expressed in the original deed of gift" from the Caddo nation to Grappe and his three sons. 7 Stat. 473. In *United States v. Brooks*, (1850) 10 How. 442, it was argued for the United States that the effect of this agreement was simply that the Grappes should retain their right, whatever it might be, under the reservation of 1801; and that that reservation was not authorized by the laws then in force there. But it was adjudged that its effect was to vest in the Grappes an absolute title in fee simple, which they might convey to any one; the court, speaking by Mr. Justice Wayne, saying: "We think that the treaty gave to the Grappes a fee simple title to all the rights which the Caddoes had in these lands, as fully as any patent from the government could make one. The reservation to the Grappes, 'their heirs and assigns forever,' creates as absolute a fee as any subsequent act upon the part of the United States could make. Nothing further was contemplated by the treaty to perfect the title. Brooks being the alienee of the Grappes for the entire reservation, he may hold it against any claim of the United States, as his alienors would have done." 10 How. 460. In that case, therefore, an agreement that the persons named "shall have their right"

Opinion of the Court.

to "certain lands reserved," and the lands "shall be laid off," was given the same effect as a present grant or patent. It is true that the treaty there in question reserved the right to those persons, "and their heirs and assigns forever." But the like construction has since been given to reservations unaccompanied by any words of inheritance.

By the first article of a treaty made on the Tippecanoe River in the State of Indiana on October 27, 1832, between the United States and the Pottawatomies of that State and of Michigan Territory, that tribe of Indians ceded their title and interest to lands in Indiana, Illinois and Michigan to the United States. By article 2, "from the cession aforesaid the following reservations are made" to certain bands of Indians. And by article 3, "the United States agree to grant to each of the following persons the quantity of land annexed to their names, which lands shall be conveyed to them by patent." "The foregoing reservations shall be selected, under the direction of the President of the United States, after the lands shall have been surveyed, and the boundaries to correspond with the public surveys." 7 Stat. 399-401.

In *Doe v. Wilson*, (1859) 23 How. 457, it was held, in an action of ejectment, that a warranty deed made by Petchico, (a Pottawatomie chief, one of the persons named in the third article of that treaty,) in February, 1833, to citizens of Indiana, before the lands had been surveyed, or a patent granted, passed a good title as against a deed made by his heirs after the issue of the patent and his death. The court, speaking by Mr. Justice Catron, said: "The Pottawatomie nation was the owner of the possessory right of the country ceded, and all the subjects of the nation were joint owners of it. The reserves took by the treaty, directly from the nation, the Indian title; and this was the right to occupy, use and enjoy the lands, in common with the United States, until partition was made in the manner prescribed." This sentence has sometimes been supposed to indicate that by the treaty the reserves took directly from the Indian nation its possessory right only, defined as "the right to occupy, use and enjoy the lands in common with the United States." But this was qualified by

Opinion of the Court.

the concluding words of the same sentence, "until partition was made in the manner prescribed," that is to say, by the treaty. And the court went on to say, in the most distinct terms: "The treaty itself converted the reserved sections into individual property. The Indians as a nation reserved no interest in the territory ceded; but, as a part of the consideration for the cession, certain individuals of the nation had conferred on them portions of the land, to which the United States title was either added or promised to be added; and it matters not which, for the purposes of this controversy for possession. The United States held the ultimate title, charged with the right of undisturbed occupancy and perpetual possession in the Indian nation, with the exclusive power in the Government of acquiring the right. Although the Government alone can purchase lands from an Indian nation, it does not follow that, when the rights of the nation are extinguished, an individual of the nation who takes as private owner cannot sell his interest. The Indian title is property, and alienable unless the treaty had prohibited its sale. So far from this being the case in the instance before us, it is manifest that sales of the reserved sections were contemplated, as the lands ceded were forthwith to be surveyed, sold and inhabited by a white population, among whom the Indians could not remain." 23 How. 463, 464.

In *Crews v. Burcham*, (1861) 1 Black, 352, a warranty deed made by Francis Besion, another person named in the third article of that treaty, under like circumstances, to one Armstrong, was accordingly held to vest the legal title in him; and the scope and effect of the decision in *Doe v. Wilson* were clearly brought out in the opinion delivered by Mr. Justice Nelson, as follows: "It was there held, that the reservation created an equitable interest in the land to be selected under the treaty; that it was the subject of sale and conveyance; that Petchico was competent to convey it; and that his deed, upon the selection of the land and the issue of the patent, operated to vest the title in his grantee. It is true that no title to the particular lands in question could vest in the reservee, or in his grantee, until the location by the President,

Opinion of the Court.

and, perhaps, the issuing of the patent; but the obligation to make the selection as soon as the lands were surveyed, and to issue the patent, is absolute and imperative, and founded upon a valuable and meritorious consideration. The lands reserved constituted a part of the compensation received by the Pottawatomies for the relinquishment of their right of occupancy to the Government. The agreement was one which, if entered into by an individual, a court of chancery would have enforced by compelling the selection of the lands and the conveyance in favor of the reservee, or, in case he had parted with his interest, in favor of his grantees. And the obligation is not the less imperative and binding, because entered into by the Government. The equitable right, therefore, to the lands, in the grantee of Besion, when selected, was perfect; and the only objection of any plausibility is the technical one as to the vesting of the legal title." "We think it quite clear, if this patent had issued to Besion in his lifetime, the title would have inured to his grantee. The deed to Armstrong recites the reservation to the grantee of the half section under the treaty, and that it was to be located by the President after the lands were surveyed; and then, for a valuable consideration, the grantee conveys all his right and title to the same with a full covenant of warranty. The land is sufficiently identified to which Besion had the equitable title, which was the subject of the grant, to give operation and effect to this covenant on the issuing of the patent, within the meaning of this act of Congress. [Act of May 20, 1836, c. 76; 5 Stat. 31.] The act declares the land shall inure to, and become vested in, the assignee, the same as if the patent had issued to the deceased in his lifetime." "Some expressions in the opinion delivered in the case of *Doe v. Wilson*, the first case that came before us arising out of this treaty, were the subject of observations by the learned counsel for the appellant in the argument, but which were founded on a misapprehension of their scope and purport. It was supposed that the court had held that the reservee was a tenant in common with the United States after the treaty of cession and until the survey and patent. It will be seen, however, that the tenancy in common there mentioned

Opinion of the Court.

referred to the right to occupy, use and enjoy the land in common with the Government, and had no relation to the legal title." 1 Black, 356, 357.

By those two decisions it was determined that the "reservations," created by the treaty with the Pottawatomies of October 27, 1832, in favor of individual Indians, by the words "the United States agree to grant" to each of them sections of land, "which lands shall be conveyed to them by patent," had the effect of granting a present and alienable interest to each. In both those decisions Chief Justice Taney concurred — which is worthy of special notice in view of the different opinion, above cited, which he had given, when Attorney General, upon the effect of similar reservations in a treaty made with another band of Pottawatomies seven days earlier, but promulgated by the President at the same time as this treaty. 7 Stat. 378, 399. And the two decisions were cited and approved by this court, speaking of Mr. Justice Matthews, in *Prentice v. Stearns*, (1885) 113 U. S. 435, 446, 447. See also the opinion delivered by Mr. Justice Miller in the Circuit Court in *Prentice v. Northern Pacific Railroad*, (1890) 43 Fed. Rep. 270, 275.

In the treaty of June 3, 1825, between the United States and the Kansas nation of Indians, it was provided, by article 6, that from the lands thereby ceded to the United States there should be made reservations of one mile square for each of the half-breeds named; and, by article 11, that "the said Kansas nation shall never sell, relinquish or in any manner dispose of the lands, herein reserved, to any other nation, person or persons whatever, without the permission of the United States for that purpose first had and obtained." 7 Stat. 245, 247. The act of Congress of May 26, 1860, c. 61, after reciting that the lands so reserved had been surveyed and allotted to each of the half-breeds in accordance with article 6 of the treaty, enacted that "all the title, interest and estate of the United States is hereby vested in the said reservees, who are now living, to the land reserved, set apart and allotted to them," and in the heirs of those deceased, "but nothing herein contained shall be construed to give any

Opinion of the Court.

force, efficacy or binding effect to any contract, in writing or otherwise, for the sale or disposition of any lands named in this act, heretofore made by any of said reservees or their heirs;" and it was further enacted that if any of the reservees, or the heirs of any one deceased, should not desire to occupy the lands to which they were entitled by the provisions of this act, the Secretary of the Interior, upon their request, should be authorized to sell the lands for their benefit, and to issue patents to the purchasers. 12 Stat. 21. In *Smith v. Stevens*, (1870) a deed made by one of those half-breeds, shortly after the passage of that act, without the authority or assent of the Secretary of the Interior, was adjudged by this court, speaking to Mr. Justice Davis, to be void, upon the single ground "that the statute, having provided the way in which these half-breed lands could be sold, by necessary implication prohibited their sale in any other way." 10 Wall. 321, 326.

By the treaty with the Chickasaws of May 24, 1834, it was agreed, in article 5, that "the following reservations be granted in fee: To heads of families, being Indians or having Indian families," a certain number of sections of land; and, by article 6, "also reservations of a section to each shall be granted to" other members of the tribe, of the age of twenty-one years and upwards, according to a list to be made out by seven chiefs named in the treaty, and filed with the agent, "upon whose certificate of its believed accuracy the register and receiver shall cause said reservations to be located upon lands fit for cultivation." 7 Stat. 451, 452. It may be observed that article 6, differing in these respects from article 5, used the future tense, "shall be granted," and omitted the words "in fee." Yet in *Best v. Polk*, (1873) 18 Wall. 112, this court held that the treaty itself conferred a full title upon an Indian to whom lands were reserved by article 6, and, again speaking by Mr. Justice Davis, said: "Can it be doubted that it was the intention of both parties to the treaty to clothe the reservees with the full title? If it were not so, there would have been some words of limitation indicating a contrary intention. Instead of this, there is nothing to show that a further grant, or any additional evidence of title, were

Opinion of the Court.

contemplated. Nor was this necessary, for the treaty proceeded on the theory that a grant is as valid by a treaty as by an act of Congress, and does not need a patent to perfect it. We conclude, therefore, that the treaty conferred the title to these reservations, which was complete when the locations were made to identify them." 18 Wall. 116. "The treaty granted the land, but the location had to be fixed before the grant could become operative. After this was done, the estate became vested and the right to it perfect, as much so as if the grant had been directly executed to the reservee." 18 Wall. 118. In support of that conclusion, this court cited decisions of the highest court of the State of Mississippi, in which, after quoting the words of article 6 of the treaty, it was said: "By this language, a title in fee passed to such persons as were above the age of twenty-one. The term 'reservation' was equivalent to an absolute grant. The title passed as effectually as if a grant had been executed." "The treaty has not contemplated a further grant, or other evidence of title — showing conclusively that by the terms used it was intended that a perfect title was thereby intended to be secured. The Indian, then, under whom complainants claim, had in herself an absolute and unconditional title in fee simple. The title was conferred by the treaty; it was not however perfect until the location was made; location was necessary to give identity. The location it seems was duly made, and thus the title to the land in controversy was consummated by giving identity to that which was before unlocated." *Niles v. Anderson*, (1841) 5 How. (Miss.) 365, 383; *Wray v. Doe*, (1848) 10 Sm. & Marsh. 452, 461.

In the treaty of June 24, 1862, between the United States and a tribe of Ottawa Indians, article 3 provided as follows: "It being the wish of said tribe of Ottawas to remunerate several of the chiefs, councilmen and headmen of the tribe for their services to them many years without pay, it is hereby stipulated that five sections of land are reserved and set apart for that purpose, to be apportioned among the said chiefs, councilmen and headmen as the members of the tribe shall in full council determine; and it shall be the duty of the Secre-

Opinion of the Court.

tary of the Interior to issue patents in fee simple of said lands, when located and apportioned, to said Indians." 12 Stat. 1238. In *Libby v. Clark*, (1886) 118 U. S. 250, this court, approving and affirming the judgment of the Supreme Court of Kansas, delivered by Mr. Justice Brewer, in 14 Kansas, 435, held that a deed to a white person from one of those chiefs, of land patented to him pursuant to the treaty, but executed before he had become a citizen of the United States, was void, for the single reason that the treaty itself, as construed by the court, expressly provided, in article 7, that no Indian should alien or incumber the land allotted to him until he had, according to the terms of the treaty, become a citizen of the United States.

In the Treaty of Prairie du Chien of July 29, 1829, between the United States and certain nations of Chippewa, Ottawa and Pottawatomie Indians, article 4, by which "there shall be granted by the United States" to each of the persons named, being descendants from Indians, sections of land, it was provided that "the tracts of land herein stipulated to be granted shall never be leased or conveyed by the grantees or their heirs to any persons whatever without the permission of the President of the United States." 7 Stat. 321. Of course, under such a provision, no alienation could be valid without the approval of the President. *Pickering v. Lomax*, (1892) 145 U. S. 310; *Lomax v. Pickering*, (1899) 173 U. S. 26.

The clear result of this series of decisions is that when the United States, in a treaty with an Indian tribe, and as part of the consideration for the cession by the tribe of a tract of country to the United States, make a reservation to a chief or other member of the tribe of a specified number of sections of land, whether already identified, or to be surveyed and located in the future, the treaty itself converts the reserved sections into individual property; the reservation, unless accompanied by words limiting its effect, is equivalent to a present grant of a complete title in fee simple; and that title is alienable by the grantee at his pleasure, unless the United States, by a provision of the treaty, or of an act of Congress, have expressly or impliedly prohibited or restricted its alienation.

Opinion of the Court.

The letters of the Commissioner of Indian Affairs, referred to in the supplemental brief of the defendant, expressing the views entertained in his office at sundry times as to the effect of a reservation in an Indian treaty to particular Indians without words of present grant, or of inheritance, were, for the most part, written before the subject had been considered by this court; and they fall far short of establishing such a uniform practical construction of the term by the Executive Departments as would warrant the court in overruling its own opinions as expressed in the cases above stated.

The treaty of October 2, 1863, between the United States and the Red Lake and Pembina bands of Chickasaw Indians, now before the court, contains in itself peculiarly strong evidence that it was intended to vest in the elder chief Moose Dung a full and complete title in the land reserved to him.

According to the decisions above cited, such would be the construction of the ninth article, taken by itself, by which "upon the urgent request of the Indians, parties to this treaty, there shall be set apart from the tract hereby ceded a reservation of six hundred and forty acres near the mouth of Thief River for the chief Moose Dung, and a like reservation of six hundred and forty acres for the chief Red Bear on the north side of Pembina River." And this construction is fortified by other provisions of the treaty, quoted at the beginning of this opinion.

By the eighth article, it is "agreed that the United States shall grant to" each male adult half-breed or mixed-blood who is related by blood to these Indians, who has adopted the habits and customs of civilized life, and who is a citizen of the United States, a homestead of one hundred and sixty acres, to be selected out of the tract ceded, and in conformity with the official surveys when made. That article was amended by the Senate by providing that no scrip should be issued under its provisions, and no assignment should be made of any right, title or interest before the issue of a patent, and no patent should be issued until due proof of five years' actual residence and cultivation, as required by the homestead act. Act of May 20, 1862, c. 75; 12 Stat. 392; Rev. Stat. §§ 2289, 2291.

Opinion of the Court.

The reservations of four times as much land to each of the chiefs Moose Dung and Red Bear under the ninth article were not made subject, by any provision of the original treaty, or of the Senate amendments, to the condition of adopting the habits and customs of civilized life, or of becoming a citizen of the United States, or of five years' actual residence and cultivation. But by the fifth article, with the avowed objects "to encourage and aid the chiefs of said bands in preserving order, and inducing, by their example and advice, the members of their respective bands to adopt the habits and pursuits of civilized life," each chief was to be paid, not only a certain sum annually out of the annuities payable to the bands by the treaty, but also, at the time of the first payment, a further sum of five hundred dollars "to enable him to build for himself a house."

The provisions of that article are wholly inconsistent with the theory that the title of the chiefs Moose Dung and Red Bear respectively in the reservation of six hundred and forty acres each, unconditionally set apart for them, was to be less absolute than the title of the half-breeds in their homesteads would be after the conditions of the treaty respecting them had been complied with.

The only reasonable construction of all the provisions of the treaty, taken together, is that the ninth article, by which "there shall be set apart from the tract hereby ceded a reservation of six hundred and forty acres near the mouth of the Thief River for the Chief Moose Dung," and a reservation of a like quantity of land at another place designated for the chief Red Bear, was intended by the United States, and was understood by the Indians, and took effect, as a present grant to each of these two chiefs of an alienable title in fee in that quantity of land at the designated place, subject only to its selection in due form, and to the definition of its boundaries by survey and patent.

Such being in our opinion the construction and effect of the terms of the treaty itself, it is unnecessary to consider the competency of the extrinsic evidence, offered by the plaintiffs, of what took place between the representatives of the parties

Opinion of the Court.

at the negotiations which preceded its execution ; for, whether that evidence be admitted or rejected, the conclusion must be the same.

Nor is it necessary to consider particularly the argument of the plaintiffs, founded upon the citizenship acquired by Moose Dung the younger under that provision of the act of February 8, 1887, c. 119, § 6, by which "every Indian born within the territorial limits of the United States, to whom allotments shall have been made under the provisions of this act, or under any law or treaty," is "declared to be a citizen of the United States, whether said Indian had been or not by birth or otherwise a member of any tribe of Indians within the territorial limits of the United States, without in any manner impairing or otherwise affecting the rights of any such Indian to tribal or other property." 24 Stat. 390. That provision might not enable individual Indians to alienate lands which were not before alienable. *Beck v. Flournoy Co.*, 27 U. S. App. 618 ; *Ells v. Ross*, 29 U. S. App. 59 ; *Coombs, petitioner*, 127 Mass. 278. But it certainly does not take away a power of alienation conferred by the treaty under which the allotment was made.

Another question of importance, fully argued at the bar, is whether Moose Dung the younger inherited all his father's rights in the reservation. This question is presented by the record in a peculiar aspect.

In the amended bill (which is the only one in the record transmitted to this court) the plaintiffs claimed title under the lease made to them by Moose Dung the younger on November 7, 1891, and alleged that at the date of that lease he was the owner in fee simple of the lands in question.

In the answer filed January 15, 1895, to that bill, the defendant denied its allegations ; and claimed title under the reservation to Moose Dung the elder in the treaty, his selection of lands and the setting apart of them by the Government as such reservation, and the lease executed by Moose Dung the younger, (so the answer alleged, in substantial accord with the form of the lease itself,) "as his oldest son, heir at law and successor as chief of the Red Lake band of Chippewa Indians,"

Opinion of the Court.

to the defendant, on July 20, 1894, as afterwards amended and approved by the Secretary of the Interior; and alleged that the Government, ever since its setting apart of the reservation, "conceded, treated and designated said selection as a reservation which said Moose Dung was entitled to possess and control, subject however to the control of the overseers and agents of the Government of the United States." The plaintiffs filed a general replication to the answer.

The testimony in the case was taken, under order of the court, by a special examiner, before whom (as appears by the record) the following proceedings were had, at the dates mentioned below:

On May 21, 1895, the plaintiffs introduced the deposition of John George Morrison, who testified that he was fifty-five years old, was a Scotch half-breed and had a quarter of Chippewa blood, had lived with the Red Lake band of Chippewa Indians all his life, spoke both English and Chippewa, was a special interpreter at the negotiation of the treaty, and was acquainted with the laws, customs and usages of the Chippewa Indians; and that, according to those laws, customs and usages, a chief like the elder Moose Dung had the right to select a piece of land and to use it as his home, and upon his death his eldest son would inherit all his land, and succeed to his office and powers as chief of the band; and the witness was not cross examined on this point.

On June 8, 1895, while the defendant was putting in evidence in support of his title as alleged in the answer, "it was admitted by the complainants' solicitor that the living chief Monsimoh was the eldest son and successor to all rights of his father under the treaty of October 2, 1863, and the son of the chief Monsimoh who signed that treaty."

On July 15, 1895, the plaintiffs put in evidence the complaint in an action brought by this defendant against them on February 15, 1895, containing an allegation that, upon the death of the old chief Moose Dung, "his son, Monsimoh, commonly called and known as Moose Dung, survived him and became the sole heir at law and successor of the said Moose Dung, deceased, and thereby succeeded to, has ever since held

Opinion of the Court.

and does now hold all the right, title and interest in and privileges pertaining to said premises, as such heir at law and successor of the said deceased chief Moose Dung."

On July 23 and 24, 1895, the defendant introduced testimony of Moose Dung the younger, and of other Indians, showing that his father had two wives, both living at the same time, and left six surviving descendants: three children, (1) Moose Dung the younger, the eldest son by the first wife, (2) a daughter by the first wife, and (3) a daughter by the second wife; and three grandchildren, (4) a son of a deceased daughter by the first wife, (5) a daughter of a deceased daughter by the first wife, and (6) a son of a deceased son by the second wife.

Moose Dung the younger, when so examined as a witness for the defendant, testified, on cross examination, that he owned the land in question; that his father, when he died, left the land to him alone; and that by the customs of the Red Lake Indians he, upon the death of his father, being his eldest son by his first wife, succeeded him as chief, and was entitled to succeed to all his land; and, being asked, "Who first spoke to you about these other sisters and children having some interest in the land?" answered, "No one said anything to me about it."

On August 1, 1895, the defendant introduced, against the plaintiffs' objection that they were incompetent and immaterial, and not within the issues of the case, certified copies, from the records of the Department of the Interior, of certain documents respecting the disposition of \$100 deposited with the Indian agent at White Earth, Minnesota, by the defendant, as rent due under the lease to him from Moose Dung the younger, as amended and approved by the Secretary of the Interior, which documents were as follows: 1st. A letter, dated February 4, 1895, from the Commissioner of Indian Affairs to the Indian agent, directing the agent "to fully investigate the subject as to who are the legal heirs of old chief Moose Dung, for the purpose of ascertaining to whom said rent should be paid;" to submit all the evidence in the matter in the form of affidavits, with a full report and recommendation; to per-

Opinion of the Court.

mit Moose Dung the younger, if he so desired, to be present in person or by attorney at the hearing; to take his affidavit as part of the evidence; and to hold the money paid by the defendant in the agent's hands to await the determination of the Commissioner. 2d. The report, dated March 30, 1895, of the Indian agent to the Commissioner of Indian Affairs, enclosing an affidavit, taken on that day, of Moose Dung the younger, stating that he and the two daughters and three grandchildren above mentioned were the only legal heirs of his father, and that they were entitled to share equally with him in the estate, and were all of legal age; affidavits, taken March 5, 1895, of those daughters and grandchildren respectively, stating their relationship and ages, and that they were entitled to share equally with him in the estate; and an affidavit, of the same date, of chiefs and headmen of the tribe to the relationship of the other deponents to Moose Dung the elder, but saying nothing as to their rights of inheritance. Each of these affidavits was signed with the mark of the deponent, and taken by a notary public. The agent reported that he considered this evidence reliable, and had no doubt that these six descendants of the old chief Moose Dung were his only living heirs, and were entitled to share equally in his estate. 3d. A letter, dated April 9, 1895, from the Commissioner of Indian Affairs to the Secretary of the Interior, recommending that these six persons "be determined to be the heirs of old chief Moose Dung for the purposes of this lease, and that the rents arising from leasing the land granted him by said treaty be divided among them equally." 4th. A letter, dated April 23, 1895, from the Secretary of the Interior to the Commissioner of Indian Affairs, concurring in the recommendation, and returning the papers. 5th. A letter, dated May 4, 1895, from the Commissioner of Indian Affairs to the Indian agent, informing him of the decision of the Secretary of the Interior, and directing him to distribute the proceeds of the lease in his hands in accordance with that decision.

The defendant, at the same time, against the like objection, introduced six receipts, dated May 25, 1895, respectively

Opinion of the Court.

signed by the mark of Moose Dung the younger, and of each of the five other descendants of Moose Dung the elder, acknowledging the receipt from the Indian agent of one sixth of \$200, "being my share for two quarters rental on lands leased to Ray W. Jones;" and a lease, executed July 19, 1895, by Moose Dung the younger and the five other descendants of his father to the defendant, for twenty years from July 20, 1894, of the lot described in the lease to the defendant of that date, the defendant paying rent according to the conditions of that lease, as amended and approved by the Secretary of the Interior.

On the coming in of the court on September 3, 1895, the defendant's solicitor — pursuant to a notice given by him to the plaintiffs' solicitor on August 3, 1895, after all the evidence in the case had been taken — moved the court for leave to file a supplemental answer, alleging that Moose Dung the younger and the five other descendants of his father, above mentioned, were each entitled to one sixth of the land in controversy; and had, in accordance with the lease made by Moose Dung the younger to the defendant in 1894 and its approval by the Secretary of the Interior, been paid their shares of the rent provided for in that lease and approval; and had likewise themselves executed a lease ratifying and confirming that lease.

On September 9, 1895, the court denied the motion for leave to file the supplemental answer; on September 17, 1895, the cause was argued and submitted; and on November 9, 1895, the court entered the final decree for the plaintiffs.

The present contention of the defendant that the right of the elder Moose Dung in the reservation passed, upon his death, not to his eldest son alone, but to the other children and grandchildren jointly with the eldest son, was clearly inadmissible under the allegations of the original answer. The question whether a supplemental answer should be allowed was a matter within the discretion of the court, largely depending upon the circumstances of the particular case. *Hardin v. Boyd*, 113 U. S. 756; *Smith v. Babcock*, 3 Sumner, 583. The reasons for denying the motion in this case are

Opinion of the Court.

not stated in the record. They may have been the late stage of the case at which the motion was made, and a failure to satisfy the court that the facts now attempted to be set up were not known, or, at least, easily accessible, to the defendant or his solicitor long before. But as this court might, even now, if justice appeared to require it, allow an amendment of the pleadings, this part of the case may be more satisfactorily disposed of by considering what the effect of those facts would have been, had they been duly pleaded. *Liverpool Steam Co. v. Phenix Ins. Co.*, 129 U. S. 397, 447; *Wiggins Ferry v. Ohio & Mississippi Railway*, 142 U. S. 396, 413, 414.

The Department of the Interior appears to have assumed that, upon the death of Moose Dung the elder, in 1872, the title in his land descended by law to his heirs general, and not to his eldest son only.

But the elder Chief Moose Dung being a member of an Indian tribe, whose tribal organization was still recognized by the Government of the United States, the right of inheritance in his land, at the time of his death, was controlled by the laws, usages and customs of the tribe, and not by the law of the State of Minnesota, nor by any action of the Secretary of the Interior.

In *United States v. Shanks*, (1870) 15 Minnesota, 369, it was adjudged by the Supreme Court of Minnesota that a probate court of the State had no jurisdiction over the estate of a chief of a tribe of Chippewa Indians, to whom a section of land, to be located by the Secretary of the Interior, had been "granted in fee simple" by the treaty between the United States and that tribe of May 7, 1864, (13 Stat. 693,) and had accordingly been located and a patent therefor issued to him. See also *Dole v. Irish*, (1848) 2 Barb. 639; *Hastings v. Farmer*, (1850) 4 N. Y. 293, 294.

In one of the cases reported under the name of *The Kansas Indians*, (1866) 5 Wall. 737, this court, reversing the judgment of the Supreme Court of Kansas in *Blue Jacket v. Johnson County*, 3 Kansas, 299, held that lands which, pursuant to the treaty of May 10, 1854, between the United States

Opinion of the Court.

and the Shawnee nation of Indians, (10 Stat. 1063,) had been patented to a chief of that nation, were not subject to taxation by the State of Kansas so long as the tribal organization remained and was recognized by the political department of the Government; and Mr. Justice Davis, in delivering judgment, said: "This people have their own customs and laws by which they are governed. Because some of those customs have been abandoned, owing to the proximity of their white neighbors, may be an evidence of the superior influence of our race, but does not tend to prove that their tribal organization is not preserved. There is no evidence in the record to show that the Indians with separate estates have not the same rights in the tribe as those whose estates are held in common." "As long as the United States recognize their national character, they are under the protection of treaties and the laws of Congress, and their property is withdrawn from the operation of state laws." 5 Wall. 756, 757. See also the opinion delivered by Judge Woods, with the concurrence of Mr. Justice Harlan, in the Circuit Court, in *Waupe-manqua v. Aldrich*, (1886) 28 Fed. Rep. 489, 495.

Following that decision of this court, it was held by the Supreme Court of Kansas, in an opinion delivered by Mr. Justice Brewer, that land patented to an Indian woman of the Shawnee tribe under the treaty of 1854, descended, upon her death, according to the law of her tribe, and not according to the Kansas statute of descents. *Brown v. Steele*, (1880) 23 Kansas, 672.

In *Richardville v. Thorp*, (1886) 28 Fed. Rep. 52, which concerned the inheritance of land patented by the United States to a member of the confederated tribes of Kaskaskia, Peoria, Pinkeshaw and Wea Indians, and in which there was no evidence of any particular law or custom of those tribes, it was held that the rightful heirs of the patentee might maintain their title in the Circuit Court of the United States for the District of Kansas against one claiming under a deed from two of those heirs, approved by the Secretary of the Interior upon a certificate of two chiefs of the tribe that the two grantors were the sole heirs of the patentee; Mr. Justice

Opinion of the Court.

Brewer, then Circuit Judge, saying that the Secretary of the Interior "had no judicial power to adjudge a forfeiture, to decide questions of inheritance, or to divest the owner of his title without his knowledge or consent."

Upon the evidence contained in this record, it is quite clear that, by the laws, usages and customs of the Chippewa Indians, old Moose Dung's eldest son and successor as chief inherited the land of his father, to the exclusion of other descendants. Both the half-breed Morrison and the younger Moose Dung, being fully examined on this point, so testified; and there was no direct testimony to the contrary. Morrison had lived with the Red Lake band of Chippewas all his life, spoke their language, and knew their laws, customs and usages; and there is nothing whatever in the case that throws any doubt on the trustworthiness of his testimony. The only matters that can be supposed to lessen the weight of Moose Dung's testimony are an affidavit, a receipt and a lease, each signed with his mark in 1895, more than three years after the lease to the plaintiffs, and wholly incompetent as independent evidence against them. That affidavit, in which he stated that the two daughters and the three grandchildren were the only legal heirs of his father beside himself and were entitled to share with him in the estate, was procured from him by the Indian agent under direction of the Secretary of the Interior, and, as well as the receipt, was evidently considered by him as mere matter of form with which he was obliged to comply in order to get any part of the rent under the lease of 1894. That it made little impression on his mind is evident from the fact that, when afterwards examined as a witness in this case, in the presence of the counsel for both parties, he testified that no one had ever said anything to him about the daughters and grandchildren having some interest in the land. And it is not without significance that the other chiefs and headmen of the tribe, from whom, under the direction of the Secretary of the Interior, affidavits were likewise obtained to the relationship between old Moose Dung and his six descendants, said nothing, and do not appear to have been asked anything, as to the right of inheritance, or

Syllabus.

as to the laws, customs and usages of the Indians upon that subject.

The title to the strip of land in controversy, having been granted by the United States to the elder chief Moose Dung by the treaty itself, and having descended, upon his death, by the laws, customs and usages of the tribe, to his eldest son and successor as chief, Moose Dung the younger, passed by the lease executed by the latter in 1891 to the plaintiffs for the term of that lease; and their rights under that lease could not be divested by any subsequent action of the lessor, or of Congress, or of the Executive Departments. The construction of treaties is the peculiar province of the judiciary; and, except in cases purely political, Congress has no constitutional power to settle the rights under a treaty, or to affect titles already granted by the treaty itself. *Wilson v. Wall*, 6 Wall. 83, 89; *Reichart v. Phelps*, 6 Wall. 160; *Smith v. Stevens*, 10 Wall. 321, 327; *Holden v. Joy*, 17 Wall. 211, 247.

The Congressional resolution of 1894, and the subsequent proceedings in the Department of the Interior, must therefore be held to be of no effect upon the rights previously acquired by the plaintiffs by the lease to them from the younger chief; and the

Decree is affirmed.

SCUDDER v. COMPTROLLER OF NEW YORK.

ERROR TO THE SURROGATE'S COURT OF THE COUNTY OF NEW YORK, STATE OF NEW YORK.

No. 53. Argued October 18, 1899. — Decided October 30, 1899.

A judgment of the highest court of a State, upholding the validity of a tax assessed under a statute of the State, upon money deposited with a trust company in the State by a resident of another State, cannot be reviewed by this court on writ of error upon the ground that the proceedings were repugnant to the Constitution of the United States, when no such ground appears to have been taken by the plaintiff in error, or considered by any court of the State, before the final judgment.